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Current Topics.

The Law Society: Provincial Meeting.

THE Provincial Meeting of The Law Society took place at Manchester on Tuesday and Wednesday last. A full report of the proceedings appears on p. 783 of the present issue. In addition to the President's address, five papers were delivered in the course of the two days. Recent statutes formed the subject-matter of three of them, the Inheritance (Family Provision) Act being dealt with by Mr. GEOFFREY C. BOSANQUET, the Increase of Rent and Mortgage Interest (Restrictions) Act by Mr. FREDERICK G. JACKSON, and the Hire-Purchase Act by Mr. G. F. LITTLER. The other two papers were concerned with legal aid for the poor, and with the effect of the new rules relating to a mortgagee's right to possession of mortgaged property. These were delivered respectively by Mr. J. E. ALLEN-JONES, M.A. (Oxon) and Mr. J. B. LEAVER. Following our usual practice, reports of these papers will be given in this and the succeeding issues, and their contents will, so far as the exigencies of space allow, be indicated in these columns.

The President's Address.

THE President, Mr. W. W. GIBSON, B.A., LL.M., paid tribute to the work performed by Sir FRANCIS SMITH during his term of office as President, and expressed regret at the retirement from the council of Sir R. A. PINSENT, Bart., after services of inestimable value to it, as well as to the profession, extending over a period of thirty-two years. Suitable reference was also made to the coming retirement of Sir EDMUND COOK, the Society's Secretary, and of Mr. H. E. JONES, the Assistant Secretary, next July. Legislation during the past year evoked allusion to the Administration of Justice (Miscellaneous Provisions) Act, the Evidence Act, and the Coal Act. The speaker thought it would be some time before it would be possible to decide whether the second of these statutes had fulfilled expectations relative to the shortening of actions and made mention of doubts entertained in some quarters as to the wisdom and practicability of its main provisions; while as to the Coal Act, it was intimated that the loss of work by solicitors who had acted for royalty owners, in consequence of the transfer to the Coal Commission, would be balanced to some extent for about four years by work in connection with proof of ownership and valuation of clients' royalties. It was indicated that counsel had been instructed to draft a Bill to deal with matters requiring legislation with reference to defalcations by solicitors and that a joint committee containing representatives of the Finance and the Professional Purposes Committees, which had been set up to consider questions arising on the formation of legal and accountancy departments by the Society, would meet after the vacation. The President deprecated in strong terms the practice of offering so-called free conveyances. Other subjects covered by the address were minimum scales, the taking by building societies as collateral security for mortgages on real or leasehold estate of mortgages or charges on personal estate other than leasehold, and law reform. On the latter topic the speaker advocated the abolition *inter alia* of the doctrine of common employment, and made several interesting suggestions for the reform of the courts, and we can only express our regret that considerations of space prevent our indicating the nature of the proposals here. Readers must be referred to the report of the address which appears on p. 784 of the present issue for particulars concerning this as well as other parts of the address. Mr. GIBSON concluded with a plea for the study of the history and antiquities of the law. No one in his judgment could be considered a finished lawyer—hardly even an educated man—unless he had acquired a competent knowledge of the origins and development of our legal system. A solicitor should be a scholar.

The Hire-Purchase Act, 1938.

MR. G. F. LITTLER, in a paper entitled "The Objects and Scope of the Hire-Purchase Act, 1938," drew attention to the great increase of hire-purchase trading in recent years and pointed to the analogy existing between this and the other extensive system of obtaining property on credit furnished by building societies. He dwelt on the fact that buyers on the hire-purchase system were frequently persons of limited means, and are frequently not in as favourable a position as the seller to drive a fair bargain. Moreover, from the trader's point of view, there was a serious risk of loss in transactions of this nature as it is impossible for him to be sure in every case that the purchasers of his goods can really afford them. In the circumstances lawyers had been asked, in preparing forms, to protect the seller's interests, and they had succeeded in evolving forms of hire-purchase agreement in which a high degree of ingenuity and skill in attaining this

object had been displayed. Mr. LITTLER went through the Act section by section and indicated clearly its scope and the changes in the law which it has effected. This part of the paper does not lend itself to condensation, and readers may be advised to consult the report on p. 787 of the present issue. With regard to what is likely to be its general effect, the speaker, as one who has prepared hire-purchase agreements with the object of giving to traders every possible right and power permitted by law, and as one who has spent much time at poor man's lawyer centres condoling with unfortunate hirers against whom hire-purchase agreements were being enforced, pronounced the Act a good one. It was aimed almost entirely against hire-purchase traders; but for the best class of such traders it imposed few obligations more onerous than those which they already accepted voluntarily, while for the minority it should serve as a salutary check. The speaker regretted that the powers of the court on the hearing of an application for recovery of the possession should depend so much on the judge's discretion, and thought that the Act might, with advantage, have imposed some limit on the period over which instalments might be made payable. These, however, were recognised as points of detail, and Mr. LITTLER concluded by indicating that lawyers would be called upon to play a considerable part in assisting traders and their customers to see how the new provisions worked out in practice.

Mortgagee's Right to Possession.

MR. J. B. LEAVER delivered a closely reasoned paper on "The Effect of the New Rules on Mortgagees' Right to Possession of Mortgaged Property." The speaker was concerned with the assignment to the Chancery Division of actions in which there is a claim for payment of principal moneys or interest secured by a mortgage or charge upon real or leasehold property or a claim for possession of any freehold or leasehold property forming a security for the payment of any principal money or interest. Mr. LEAVER indicated the present position with reference to this and certain other changes in the R.S.C., and suggested that in an effort to do justice to the mortgagor, and in tenderness towards him, there was creeping in a certain relaxation with respect to giving time for payment, giving the mortgagor the opportunity of making statements not on oath, and attending at any stage of the proceedings without troubling to enter appearance, by paying heed to letters which are written when the defendant is unable, or does not choose, to appear, and also with respect to costs. The procedure, as it stands, may, in the speaker's view, give to defendants a new idea as to the certainty, exactitude and inevitability of the law which go to make for that wholesome respect which is essential to its operation. The speaker dwelt upon the change from the standpoints of its necessity or desirability, of its results on the efficient dispensation of justice and of its effects upon the legal profession, and he concluded by making certain suggestions, such as a standardisation of the discretions vested in the court, and the hearing of such applications in vacation, which were designed to improve the present position, though he made it clear that he would prefer to see the old procedure restored. It is impossible within the confines of a short paragraph to do justice to Mr. Leaver's arguments, but they are clearly indicated in the report of the paper on p. 791 of the present issue, and to this readers must be referred for further information.

The Inheritance (Family Provision) Act, 1938.

IN the course of an interesting paper entitled "The Inheritance (Family Provision) Act, 1938, and Restriction upon the Right of Testamentary Disposition in English Law," Mr. GEOFFREY C. BOSANQUET recalled the special writ "*De rationali parte bonorum*" which was based on the consideration that where a deceased person left a widow and children his personal estate ought to be divided into three shares, one for the widow, one for division among the children and the remaining third for disposal by will—a distinction still recognised in Scotland by the expressions: "the wife's part," "the bairns' part" and "the dead's part." The speaker alluded to the old controversy whether the writ would lie at common law, or whether local custom was needed to support it and traced the steps leading to its total extinguishment. He drew attention to the differences between the position under the writ and that obtaining under the new Act and brought out the main features of the latter in the process. The Act did not admittedly go so far as some would wish, nor did it provide safeguards against evasion, which would not be difficult; but it effected an alteration which was not merely an entirely new move imposing a restriction on testamentary disposition where there had been no sort of restriction for a hundred years and more but was actually a reversal of direction and, as far as it went, a return to an almost forgotten state of the law when the claims of family upon the estate of a deceased's husband or father were recognised and allowed by the courts. The speaker regarded such legislation as born of a changing social consciousness and reflecting a gathering tendency in public opinion. As such it was experimental, and the legislature, it was suggested, had been wise in taking but a short initial step. The paper is reported on p. 795 of the present issue.

Town and Country Planning: Report.

THE Town and Country Planning Advisory Committee, which was appointed some four years ago by the then Minister of Health to consider general questions relating to the administration of town and country planning in England and Wales, expresses, in its recently issued report, the opinion that the powers of the Town and Country Planning Act, 1932, are, subject to slight qualifications, adequate to secure the preservation of the countryside, provided they are skilfully and firmly administered. It is thought, however, that there is room for improvement in administration, and that the powers of the planning authorities to exercise control over the placing of buildings are not being used as widely or effectively as they might be. It is accordingly recommended that these authorities should review their existing staff in the light of the report, and it is suggested that every planning scheme should have at least one officer or consultant with qualifications in planning, and, if possible, with architectural qualifications also. Failing an architectural qualification in their own officer, it is urged that authorities should make arrangements for architectural advice to be available as required. Joint bodies for the administration of rural zoning provisions are favoured, and it is considered that the Ministry of Health should take a more active part than hitherto—such as by publishing more freely suggestions on the best way of meeting difficulties, and maintaining a closer touch with the authorities—in assisting local planning. If necessary the Ministry should expand its inspectoral staff for the purpose. The Committee advocates a more determined line in the prevention of ribbon development and expresses doubt whether planning authorities are making the most of the opportunities afforded by the Restriction of Ribbon Development Act, 1935, particularly where the highway authorities are prepared to pay for restriction of access. Doubts are also expressed whether sufficient consideration is ordinarily given to the preservation of the countryside in road planning, and it is urged that arrangements should be made for regular consultation between the planning and highway authorities in each county. The committee is impressed with the inadequacy of the present law on the subject of advertisements, but in view of the fact that a conference convened by the Home Office is considering the question, it does not treat

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the matter at length. It is, however, recommended that a single and effective code for the control of advertising, administered by one department, should be put into force with the least possible delay, and that, as the principal issue is one of amenities, the responsible department should be the Ministry of Health.

Legislation.

THE committee has confined itself to matters of immediately practical import and has refrained from suggesting comprehensive legislative changes, particularly in view of the fact that the Royal Commission on the Geographical Distribution of the Industrial Population is still in the middle of its investigations. Certain of the committee's recommendations would, however, involve legislative changes of a minor character, and these may be briefly indicated. Thus it is suggested that the registration of trees should be enforceable during the interim development period, that agricultural buildings should be subject to control with respect to external appearance, that the power to impose a temporary restriction on general development should be strengthened, and that authorities should be empowered to set buildings back a reasonable distance from the coastline without incurring a general liability to pay compensation. The committee, moreover, proposes the following change to meet the difficulties sometimes encountered in successfully operating ss. 15 and 16 of the Town and Country Planning Act, 1932. The latter section enables the authority to permit building operations pending the coming into operation of a general development order, but provides that the authority must assent to any application for permission to commence building operations, notwithstanding the temporary restriction, unless it is satisfied, not only that the operations will be objectionable, but also that other land suitable for the operations proposed is available on reasonable terms. The committee recommends that the words "unless they are satisfied that other land suitable for such building operations as are specified in the application is available on reasonable terms" in the proviso to s. 16 (2) should not be applicable where the authority is satisfied that there is no justification for contemplating development of the type proposed in the area at all. Finally, the extent to which the country is now subject to planning may be briefly indicated from figures appearing in the report. Out of 37,339,000 acres in England and Wales, 24,296,000 acres were, it is stated, at the end of June, 1938, covered either by effective resolutions or by operative schemes. Progress in this direction is illustrated by the fact that only 9,384,000 were so covered at the end of March, 1938, while the figure of land subject to resolutions or schemes continues to mount by an average of approximately 150,000 acres a month. Moreover, the areas for which no resolution has yet been taken are largely those in which little or no development need be anticipated, and though non-planned areas may still be a problem, they are, it is said, following the immense extension of planning control under the Act of 1932, no longer the main problem.

Reports of Criminal Matters.

THE report of the Departmental Committee on Detective Work and Procedure contains some important observations concerning the methods employed by certain newspapers in reporting criminal matters. It is recognised that in rare cases publication of the details of a criminal case is necessary and that the assistance of the Press may be very valuable, but in many others the risk of authorising publication is thought to be unjustified. It is intimated that there is no obligation upon the police to provide the Press with material for publication, though it is open to them, with discretion, to give such details of criminal cases as may reasonably be given as news, without involving any disclosure which would be contrary to the interests of justice or cause unnecessary pain or anxiety to innocent members of the public. The report adverts to what is described as a progressive lowering in recent years in the standards of certain newspapers publishing material without regard, it is said, for the interests of justice, and points to the particularly serious innovation constituted by the practice of sending reporters to conduct independent investigations of crimes. "The presence of these persons in the neighbourhood of the investigating officers," the report states, "is in itself a handicap to the conduct of the inquiry; their approaches to prospective witnesses may have disastrous reactions on the investigation, and the publication of particular items of information in the paper may have a fatal effect and gravely prejudice the interests of justice." It is urged that where a chief officer of police is advised that a contempt of court has been committed, there should be no hesitation in taking proceedings; but the committee thinks that the existing state of the law does not go far enough to protect the interests of justice, and that what is needed is legislation aimed primarily at the prohibition of interviews and the obtaining of statements from prospective witnesses, and of reports of reputed crimes where such reports are reasonably likely to prejudice the investigation of the crime.

Rural Housing.

ATTENTION may be drawn to the fact that a new edition of the Ministry of Health's booklet entitled "New Homes for Old" has recently been issued. The earlier edition was brought to the notice of local authorities by a circular of 6th March, 1937. The new edition incorporates changes due to the Housing (Rural Workers) Act of the present year, and sets out in non-technical language the facilities offered by this Act and its predecessors for the renovation of old cottages. It may, perhaps, be recalled that the modifications and amplifications of the law effected by the Act of 1938 were the subject of a circular (No. 1716) which was dealt with in these columns in our issue of 23rd July last. The new edition contains a brief preface by Mr. WALTER ELLIOT, the present Minister of Health, who urges that the objects of the Acts are to help the workers to homes in which they can bring up their families in decency and comfort, and to help the land to keep its people and to preserve the countryside as generations have known and loved it.

The Dominions and Neutrality.

IN his recent elaborate volume on "The Dominions as Sovereign States," Professor BERRIEDALE KEITH discusses at considerable length the question of the precise constitutional position of the Dominions in the event of this country becoming involved in war. He points out that as the Dominions now possess unfettered control over their military forces, it would rest with them, in the event of a declaration of war by Great Britain, to decide to what extent, if at all, unless they themselves were attacked, they would intervene on behalf of the mother country. Various factors, as he goes on to say, have combined to lessen Dominion willingness to play a part in defence, and it would seem that this view accurately represents the formal constitutional position of the Dominions as to actual participation in hostilities. As the old saying reminds us, however, and it is comforting at times, blood is thicker than water, and it is significant of the truth of this that only a few days ago the Lieutenant-Governor of one of the Canadian Provinces, in addressing a meeting of ex-soldiers, declared that Canadian neutrality in the event of Great Britain being at war was impossible. Of course, as he went on to add, the precise extent and manner in which Canada would participate would be for the Parliament of the Dominion to decide. This we believe will be the attitude adopted by each and all of the other Dominions, but we need hardly say that we earnestly trust that the necessity for any such participation will not be called for; in other words, that war may be avoided.

Criminal Law and Practice.

AMENDMENT OF INDICTMENT AT THE TRIAL.

An application to amend the indictment is not infrequently allowed at the actual hearing of a criminal charge. The authority for granting such an application is contained in s. 5 of the Indictments Act, 1915, which empowers the court, if it considers an indictment defective, to order its amendment before trial or at any stage of the trial, unless, having regard to the merits of the case, the required amendments cannot be made without injustice.

It also enacts that the court may make such order as to the payment of any costs incurred owing to the necessity for amendment as the court thinks fit. The court may also postpone the trial if it is of opinion that postponement is expedient in consequence of the exercise of the power of the court under the Act to order the amendment of an indictment.

Under the old statutes applications for radical amendments were never looked upon with great favour. In *R.* v. *Benson* [1908] 2 K.B. 270, for example, the indictment contained a count charging the prisoner under s. 13, sub-s. (1), of the Debtors Act, 1869, that in incurring a debt he obtained credit by the false pretences that he had been sent from Sheffield to work as a painter at the carriage works at Oldbury, and that he required board and lodging at Oldbury for that purpose, and that he incurred a debt by these false pretences.

The evidence was that, although he made these statements, the prosecutrix said she was surprised to hear it as they were discharging on Saturday some of their workmen. The prisoner then said: "If you will keep me till Monday, I will settle then." On that the prosecutrix supplied him with board and lodging. In fact the prisoner had not been sent for, but had come to see whether he could get work at the railway carriage works. He was unsuccessful, but he later succeeded in getting work at Dudley and was on his way back from work when arrested.

The prosecution desired, in consequence of this evidence, to amend the indictment and change the count to one of obtaining credit by fraud. The chairman allowed this and directed the jury accordingly, subject to a case being stated on the point to the court of Crown Cases Reserved.

The remarks of Lord Alverstone, C.J., in that court on the interpretation of the then current statute (Criminal Procedure Act, 1851, s. 1), are not in point to-day, but he added: "The procedure in a criminal trial assumes that the bill of indictment has gone before the grand jury and that they have returned a bill. To allow an amendment to be made substituting a fresh offence might have the effect of placing a prisoner upon his trial for an offence which has never been before the grand jury. The fact that the evidence may be the same to establish both cases is immaterial. There is no power to make an amendment substituting one offence for another." The conviction was quashed.

It was held in *R.* v. *Cohen*, 3 Cr. App. Rep. 180, that it was wrong to amend an indictment alleging false pretences that a certain stone was a diamond, and that it was worth £8, by striking out the false pretence that it was worth £8, although it was a statement of value, and as such a mere matter of opinion. The court held, however, that there had been no substantial miscarriage of justice.

Since the Indictments Act, 1915, it has been held that, where, after a jury has found a true bill, the indictment was amended by adding a fresh count charging wholly new false pretences, the amendment was "a profound irregularity." "The appellant," said the Lord Chief Justice, "could not possibly prepare a defence to the second charge, the preferring of which was calculated to do him grave injustice" (*R.* v. *Errington*, 16 Cr. App. Rep. 148). In *R.* v. *Hughes*, 20 Cr. App. Rep. 4, the false pretence alleged in the indictment was bad as it was "a statement entirely consistent with mere futurity," and permission was given at the close of the case for the prosecution to alter it "so as to introduce into the indictment for the first time the fundamental ingredient of representation of an alleged existing fact." Lord Hewart, C.J., said: "It was not correcting a defect in the indictment, it was altering its substance, and it was altering its substance in circumstances in which, as it appears to us, the defendant was prejudiced by alteration." An example of a regular amendment was approved in *R.* v. *Fraser*, 17 Cr. App. Rep. 182, where it was held that the accidental omission of the words "with intent to defraud" could be put right.

The position since the abolition of the grand jury was recently reviewed by the Court of Criminal Appeal in *R.* v. *Cleghorn* on 27th June, 1938 (82 Sol. J. 731). The indictment in that case charged (1) the appellant with his brother with having conspired together on divers dates in 1937 to have in their possession with intent to deceive a document so closely resembling a certificate of insurance issued under Pt. II of the Road Traffic Act, 1930, as to be calculated to deceive, being an offence under s. 112 (1) (*b*) of that Act: (2) the appellant with obtaining a certificate by giving as his name that of his brother; (3) the brother with guilty possession of a document resembling a certificate.

The short facts were that the appellant had given his brother's name in applying for an insurance policy in respect of his motor car. The insurance company issued it, but later cancelled it on discovering that the certificates were being used to cover a greater number of persons than that contracted for. The first count was amended at the trial by being divided into two, the first charging conspiracy to make a false statement for the purpose of obtaining a certificate, and the second being similar to the original first count except as to date.

In giving judgment the Lord Chief Justice referred to Lord Alverstone's remarks in *R.* v. *Benson* quoted above, with regard to the grand jury, and said that there was now no grand jury and a somewhat different procedure. Section 2 (2) (i) of the Administration of Justice (Miscellaneous Provisions) Act, 1933, provides that where a person charged has been committed for trial the bill of indictment against him may include, either in substitution for or in addition to counts charging the offence for which he was committed, any counts founded on facts or evidence disclosed in any examination or deposition taken before a justice in his presence, being counts which may lawfully be joined in the same indictment. A proviso to sub-s. (3) enacts that an indictment preferred otherwise than in accordance with the previous sub-section should be liable to be quashed, but if a person has been convicted an application to quash the indictment or count would only be entertained at the trial.

The Lord Chief Justice said that it was now too late to raise the point and there was no substance in it. The appeal was therefore dismissed.

The interesting part of the Lord Chief Justice's judgment was where he said that if it appeared to the court that any real injustice had been caused by the alteration, that would, even at the present late stage, have been a matter well worthy of consideration. The Administration of Justice (Miscellaneous Provisions) Act, 1933, did not, it is submitted, extend the power of the court so as to enable it to make radical amendments to indictments during the trial, and although an indictment cannot be quashed on appeal, but must be quashed at the trial, if a substantial injustice occurs through trial without sufficient notice of a fresh charge owing to no adjournment or no adequate adjournment being granted, the Court of Criminal Appeal has power to allow an appeal, as it can do so if on any ground there has been a miscarriage of justice (Criminal Appeal Act, 1907, s. 4 (1)).

Mr. W. W. Gibson.

It is our privilege to present with this issue a portrait of Mr. William Waymouth Gibson, Solicitor, who has been elected President of The Law Society for 1938–39. Mr. Gibson is senior partner in the firm of Messrs. Clayton & Gibson, of Newcastle-upon-Tyne.

He was born in 1873 and is the eldest son of Mr. William Gibson, who from 1877 to 1917 was a partner in the firm of Messrs. Clayton & Gibson. He was educated at Uppingham and Queens' College, Cambridge, and in 1895 he became articled to his father's partner. He was admitted a solicitor in 1899 and two years later he became a partner.

Mr. Gibson has been an extraordinary member of the Council of The Law Society since 1920, and is on the Scale and Legal Education Committees of the Council. He has twice been President of the Newcastle-upon-Tyne Incorporated Law Society and has also held the offices of Secretary and Vice-President. He has been a member of the Standing Committee of that Society for twenty-six years.

Among sports in which Mr. Gibson has taken part during his career are rugby football, shooting, lawn tennis, otter hunting and beagling. He is a member of the Council of the Society of Antiquaries of Newcastle-upon-Tyne, and of several associated committees. He is also a member of the Northumberland County History Committee, and of the British Records Association and the Selden Society. He takes a great interest in the history of English Law and in legal antiquities.

Decisions under the Matrimonial Causes Act, 1937.

I.

Now that the Matrimonial Causes Act, 1937, has been in force for some nine months, it may be of value to practitioners to review the decisions that have so far been reported upon it, and to indicate the principles which, it is submitted, they establish. Up to the present we have not had a decision of greater status than that conferred by a divisional court. It is therefore possible that the law as stated in the text will be modified by higher tribunals in the future.

The first case is that of *Poulden* v. *Poulden* [1938] P. 63; 82 Sol. J. 197, in which Mr. Justice Bucknill had to deal with the question of connivance. There a zealous woman detective, employed by the husband, had gone to a hotel with the wife, together with two men, whom they had met for the first time shortly before. She left the wife, who had been drinking, in a bedroom of the hotel, alone with one of the men. The time of this episode was about midnight.

The learned judge in the circumstances had no difficulty in finding adultery. The difficulty arose on the question of connivance. It was in evidence that the husband had instructed the detective not to lead the wife into temptation. Nevertheless the learned judge, following *Gower* v. *Gower* (1872), L.R. 2 P. & M. 428, held that if an agent, employed to get evidence of adultery, deliberately promoted the adultery, it was not only connivance in the agent, but debarred the employer from a decree. Applying s. 4 of the new Act, Mr. Justice Bucknill directed himself that he had to be satisfied, before granting a decree, that there had not been connivance and not being so satisfied as a fact he dismissed the petition.

The case of *Chapman* v. *Chapman and Thomas* (*Taylor intervening*) [1938] P. 93; 82 Sol. J. 216, which came before Mr. Justice Hodson, decided a number of points. As the title indicates, the husband petitioned for divorce on the ground of adultery, and the wife in her answer asked for divorce on the ground of her husband's adultery.

The original petition of the husband was presented in June, 1935, and the wife's answer, which in addition to adultery alleged desertion, was filed in the same month. During the long period in which, for some reason, the case was pending, the 1937 Act was passed and came into force. Accordingly the wife, taking advantage of s. 2 (*b*) of the Act, filed, on 11th January, 1938, a "further" or "supplemental" answer alleging desertion for three years without just cause immediately preceding the filing of the further answer. At the trial the wife was given leave to file and present a petition for divorce containing the same allegation, the period running from the filing of the petition.

Mr. Justice Hodson, on the facts, negatived adultery by the wife, and the charge in respect of the intervener was withdrawn. This left the question of desertion. As the further answer was, in the learned judge's view, part of the original answer, in accordance with *Sadler* v. *Sadler* [1934] P. 149, and as, when the original answer was filed, the 1937 Act was not in force, he felt that the further answer could not stand. This left the wife's petition presented with leave.

On this petition the question was whether the three years' period of desertion immediately preceding this petition was interrupted. The difficulty was caused by the decision of the Court of Appeal of *Stevenson* v. *Stevenson* [1911 P. 191, that desertion did not run after the presentation of a petition for divorce, in that case by the wife, because "She was praying the court to require her husband to keep away."

Mr. Justice Hodson held, nevertheless, that as in the case before him the husband had presented a petition against the wife, it was practically impossible for the wife to return and that it was the husband who took the step that effectively prevented the wife from returning. Desertion was, therefore, uninterrupted from 11th June, 1933, until the trial.

He also decided that the words "without cause," as applied to desertion under the new Act, were not distinguishable from the words "without reasonable cause" under the Matrimonial Causes Act, 1857. Inferentially it was also decided that desertion which began before 1938 could be relied on to found proceedings under the 1937 Act. To this extent the Act was retrospective, but not to the extent of granting relief under the new Act in respect of proceedings begun before it came into force. The wife accordingly got her decree.

In *Beattie* v. *Beattie* [1938] P. 99; 82 Sol. J. 297, the husband, who had been urging the wife to divorce him for some years, gave her £15 to effect this on the understanding that she should not tell her solicitors and would return the money if she did not take proceedings. He had shortly before furnished her with evidence of his adultery. In these circumstances the President, Sir Boyd Merriman, having found adultery, had to decide if there was collusion.

In spite of these facts, the learned President held that the wife "never in fact made any arrangement that in consideration of the money she would bring proceedings." He held that if before 1938 there had been the slightest doubt that a transaction such as the one before him required the closest scrutiny, and there was not, since that time, it was more plain, if possible, that scrutiny was required, as s. 4 of the new Act laid down that unless the court were satisfied, *inter alia*, that the petition had not been presented or prosecuted in collusion with the respondent, it must dismiss the petition. The learned President was so satisfied and he made a decree.

In *Gower* v. *Gower* (1938), 54 T.L.R. 614; 82 Sol. J. 336, the guilty husband applied under s. 9 of the 1937 Act to make the decree absolute. He was in contempt in that he had not complied with an order against him, for costs, made at the trial. Nevertheless, Mr. Justice Collins made an order giving leave to insert the motion, to make the decree absolute, in the cause list for the following week.

The reasons for the learned judge's decision were: (A) that the wife's motives for not applying to make the decree

absolute were a desire to extract financial terms more favourable than those contemplated when the decree *nisi* was pronounced, and (B) that the husband's failure to comply with the order for costs was due to lack of means.

Probably the case of *Lloyd* v. *Lloyd and Leggeri* [1938] P. 174; 82 Sol. J. 397, would have been decided in exactly the same way by Mr. Justice Langton before the Act as after it, for the case was defended and all the facts, as regards connivance, fully before him. He does however lay down, in slightly different terms from those employed by Mr. Justice Bucknill, in *Poulden* v. *Poulden* (*supra*), which Mr. Justice Langton followed, that the onus is on the petitioner to show that connivance does not exist.

In *Lloyd's Case*, the wife had been, before the husband married her, a widow and the mistress of two men, and after the marriage she became the mistress of two other men, before she became the housekeeper and subsequently the mistress of the co-respondent. All these facts were known to the husband at the time of his wife's association with the co-respondent, but he was at that time in poor circumstances and not in a position to provide a home for her. The husband passively acquiesced in the relationship between his wife and the co-respondent until some trivial incident persuaded him that his wife preferred the co-respondent to himself. He then set about divorcing her.

Adultery not being in dispute, the difficulty in the case was whether on the authorities, which Mr. Justice Langton reviewed, the passive acquiescence of the husband, who was not in a position to prevent the adultery, amounted to connivance. He held that it did and dismissed the petition.

The first of the decisions on the effect of a separation deed on the running of the desertion period was *Ratcliffe* v. *Ratcliffe* (1938), 54 T.L.R. 793; 82 Sol. J. 455. There, the parties separated in 1932 under a deed, whereby the respondent husband agreed to pay his wife 30s. a week. He kept up the payments for a month and no longer. Mr. Justice Langton found on the facts that the agreement had been repudiated and that the husband had never intended to return to his wife. He therefore granted the wife her decree on the ground of desertion.

In *Germany* v. *Germany* (1938), 54 T.L.R. 799; 82 Sol. J. 456, Mr. Justice Langton again held that the onus was on the petitioner to negative condonation. In that case the wife became aware of her husband's adulterous association with another woman and left him. She started divorce proceedings, whereupon the husband saw his wife and promised to break off with the other woman, which he did. Marital relations were resumed, but after changing her mind more than once the wife decided to end the marriage and resumed the divorce proceedings.

The adultery of the husband was not in issue. The only difficulty was whether on the facts there was condonation, especially as there was no marital home to which either the husband or wife could return. After referring with approval to *Poulden* v. *Poulden*, Mr. Justice Langton pointed out that whereas before 1938 the presumption was against connivance and that this presumption had been swept away, there was no presumption as regards condonation, but that now the burden lay on the petitioner to show that there was no condonation.

The learned judge found on the facts that there was condonation and dismissed the petition. This was another case in which it is probable that the decision would have been the same way before the Act as the facts were fully before the court, the only question was whether the facts amounted in law to condonation.

Costs.

SHORTHAND NOTES AND APPEALS.

THERE was considerable agitation at one time for the provision of some scheme which would have the effect of relieving judges of the labour of note-making. The suggestion was considered by Mr. Justice Atkinson's Committee, and the outcome of their deliberations is the introduction into the courts of the official shorthand writers, whose function it is to provide note-takers in the Chancery and King's Bench Courts.

A complete note is now taken of the evidence, summing up and judgment in all witness actions, the cost thereof being charged on the public funds. If any of the parties desire to have transcripts of the proceedings during the course of the trial, they must pay for the cost of such transcripts themselves. A transcript of the counsel's speeches can also be obtained, if the shorthand writers are instructed prior to the hearing. If, during the trial, the judge requires a transcript of any part of the proceedings the cost thereof will form part of the costs in the cause, and will, in the first instance, be borne by the plaintiffs.

So far, therefore, as the ordinary practice with regard to the provision of shorthand notes is concerned, there has been little variation from the old practice, except that now there is always a shorthand writer present in the court, whereas previously the party requiring the shorthand notes had to make his own arrangements for the attendance of a note-taker.

This, however, is not the aspect of the matter with which we are immediately concerned. It will be recalled that on an appeal, the appellant must provide the Court of Appeal with three copies of the transcript of the summing up and judgment, and the cost of providing these copies is treated as part of the costs in the cause, and no order to that effect is necessary.

In the normal course of events, prior to the introduction of the official shorthand writers, the appellant's solicitors would bespeak from their shorthand writer, if one was present at the trial, a transcript of the summing up and the judgment, and would then make three copies thereof for the use of the Court of Appeal, and for these copies they would be allowed in their party and party bill of costs, if the appeal was successful, a fee of 4d. per folio for each copy. Thus, if the summing up and judgment amounted to 300 folios, then the successful appellant's solicitors would be entitled to charge in their bill of costs, in addition to the cost of the transcript, a sum of £15 in respect of the three copies made for the Court of Appeal, plus 33⅓ per cent. increase pursuant to the Supreme Court Rule of 1936, making altogether a total of £20.

Since the introduction of the official shorthand-writers, however, the appellant's solicitor is no longer allowed to make three copies of the transcript for the use of the Court of Appeal, the proper procedure being for the solicitor to bespeak from the official shorthand-writers three copies of the transcript of the summing up, judgment and evidence, which he must pay for himself, either at the time when the copies are bespoken or else when they are completed. The transcripts will be sent direct by the official shorthand-writer to the Lords Justices' Clerk.

It will be apparent, therefore, that the solicitor now is deprived of the profit resulting from copying the transcripts for the use of the Court of Appeal, and the position is aggravated by the fact that, formerly, if there was an agreement that a transcript of the evidence should be supplied, the costs thereof to be costs in the cause, the solicitors' copying charges might, and often did, amount to no inconsiderable sum. This may appear to be a trifling matter, but it loses its insignificance when one bears in mind the fact that the copying of the documents is really the most remunerative

part of the solicitors' work on an appeal to the Court of Appeal. He is allowed no fee as "Instructions for Brief," notwithstanding that he may have a very considerable amount of work to do in analysing and sifting the evidence and judgment, and summarising the salient points, to enable him properly to instruct counsel.

There is another point that appears frequently to be overlooked, and that is that although the official shorthand writers may be in court, and the judge may intimate that he requires a transcript of the evidence, and, on that account, the solicitors to the parties themselves bespeak a copy of the transcript for the use of their counsel, the cost thereof will not form part of the costs in the cause, either in the lower court or in the Court of Appeal, in the absence of an agreement between the parties that the matter is to be treated on that footing. In the absence of such an agreement the old rule, which is exemplified in the case of *Jones* v. *Llanrwst Urban Council* [1911] 1 Ch. 393, prevails and each party must bear the cost of obtaining a copy of the transcript for the use of their counsel. If there is an agreement that the cost of obtaining a copy of the transcript for the use of counsel shall be costs in the cause, then such costs will be allowed to the successful party as a matter of course. In this respect it may be useful to remember the *dictum* of Parker, J., in the case of *Jones* v. *Llanrwst Urban Council* (*supra*), where he observes, at the foot of p. 413: "Of course where it is proved that there is an agreement that costs such as these (i.e., shorthand-writers' charges and the cost of copying the transcripts for counsel) should be costs in the cause, they will be treated in that way."

We may, perhaps, add that the matter has now been carried a step further by the case of *Greaves* v. *Drysdale* [1936] W.N. 188, wherein it was decided that if, in the view of the court, a transcript of the evidence is essential to the proper conduct of an appeal, then, notwithstanding the absence of any agreement between the parties' solicitors, the cost of the transcript of evidence may still be allowed by the court as part of the costs of appeal.

Company Law and Practice.

Some Considerations on Company Law.

No one who habitually deals with the affairs of companies incorporated under the Companies Act, can have failed to consider at times that the position with regard to many private companies is unsatisfactory. In the first place, he must be struck with the way in which such concerns can be used as an engine of fraud, or if not fraud, then of something akin to it. In cases where the members of a small private company are all directors, it is practically impossible for the creditors to obtain any redress when the company goes into liquidation insolvent and in the meantime all the assets of the company have been exhausted in paying handsome salaries to the directors. Those who have listened to summonses by the creditors or liquidators of an insolvent company against the directors for fraudulent trading must have been struck by the enormous burden of proof which the plaintiffs have to discharge and will have no doubt noted with regret that such burden of proof is apparently substantially increased by the fact that s. 275 of the Companies Act, 1929, makes the carrying on of the business of a company in such a way as to amount to fraudulent trading a criminal offence punishable with imprisonment for a term not exceeding one year.

It sometimes happens, however, in such a case as I have mentioned, where the directors have been carrying on the business until the last moment and paying themselves large salaries, that redress may be open to the creditors by reason of some technical mistake on the part of the directors. For example, the board may have in accordance with the articles voted themselves remuneration, but for some reason may not have been a properly constituted board through some oversight. This, though beneficial to the creditors in a particular case, cannot, one would think, be a really satisfactory position when the directors of a small company can with almost complete safety ignore the interests of the creditors where they are properly advised, but cannot always do so where they act on their own understanding of company law or are wrongly advised.

In cases where directors have irregularly voted themselves remuneration but have not done so in disregard of other people's rights and interests, they may well be able to show that they had acted reasonably and honestly and ought in the circumstances to be excused, and may well be relieved from any liability therefor by the court under s. 372. This provision increases considerably the cost of any proceedings against directors for misfeasance on account of payments irregularly made, for even in the clearest cases it will always be worth the while of the directors to invoke the aid of the court under this section, and so doing almost certainly requires evidence as to the conduct of the affairs of the company to be gone into in considerable detail.

It is difficult to see a remedy for this state of affairs, but its origin is not so difficult to trace. In principle the constitution of small private companies to-day is the same as that of large public concerns, and it is such concerns that, ever since the first Companies Act, those Acts have in mind. The whole structure is built up on the basis that while the company is a going concern, the directors will have to account to a large body of the public who will have a certain amount of information available as to the affairs of the company, and who will in the publicity of the general meeting be able to control the directors to a considerable extent. In such a case the interests of the general body of shareholders will be, in the great majority of cases, the same as that of the creditors of the company, and the creditors would be protected against the assets of the company being spent in an improper way by reason of the fact that the shareholders would also try to ensure that it was not done.

There is another way in which small private companies may prove unsatisfactory, and this, I think, may also be attributable to the same source. It may from time to time prove possible for some only of the shareholders of a private company to get complete control into their own hands, for example, by the directors refusing to register executors of deceased members, as was done in the case of *Re Cuthbert Cooper & Sons Ltd.* [1937] 1 Ch. 392, a case which has been on former occasions referred to in this column. The provisions of the Act relating to private companies allow such a course to be taken legally, and no doubt there would be no point, in the case of a public company, in directors refusing to register transfers, unless on some sensible business ground. Such a proceeding is barely possible, having regard to the publicity it would receive and the consequent probable adverse effect on the company's business. In the case of a private company, however, as the law now stands, by so acting the directors are able, if they are so minded, to expropriate certain members almost entirely. Again, it is difficult to see what the remedy for such a state of affairs should be, but the difficulty appears to arise from the fact that the provisions relating to private companies seek to confer on a body similar to a partnership the benefits of limited liability, and that too much stress has been laid on the principles of company law as applicable to large public companies acting in the full glare of publicity, and not enough stress on the principles of partnership law. Or it may be that some wider meaning could, with advantage, be given in the cases of private companies to the "just and equitable" clause of the winding up section of the Act.

It may also be thought that the position with regard to public companies is not entirely satisfactory, and in particular

with regard to what the Americans call "the divorce of ownership from control." That is to say, that the ordinary shareholder has very little control over the policy of the company by his vote in general meeting, and there is nothing to secure that the directors shall manage the company's business to the best advantage of the individual shareholders. To a certain extent it is inevitable that the control of the shareholders should grow less, in view of the increasing complexity of business life. It is very difficult for an ordinary individual except in the most simple cases, fully to understand the reason for what goes on in business, just in the same way as it becomes increasingly more difficult for a citizen to understand what goes on in politics and for him to form a reasonable judgment of his own.

In this connection, however, it is of interest to see what steps the original Companies Act took to secure that the interests of the smaller individual shareholders were protected against being swamped by the holders of large blocks of shares. Clause 44 of the Table A contained in that Act provided as follows: "Every member shall have one vote for every share up to ten; he shall have an additional vote for every five shares beyond the first ten shares up to one hundred and an additional vote for every ten shares beyond the first hundred shares." There is, I think, plainly, a good deal to be said for such a scheme, but owing to the decision in *Pender* v. *Lushington* it proved of no practical value, because, as was there decided, the holder of a block of shares can transfer them to nominees so as to secure to himself the greatest possible number of votes, for the register was held to be the only evidence by which the rights of members to vote at a general meeting could be ascertained. This case and the principle there laid down suggests another point in which the present company law departs from the original principles guiding the drafting of the Acts. To-day the register of members is merely a statement of certain facts that bear or may bear no kind of relation to the truth. The provisions, however, which provide for publicity for the register clearly anticipate that it will be of interest to the public to see who are the shareholders in a particular company, and thus they cannot now rely on being able to do. The practical advantages of the company not having to recognise any trust are plainly enormous, but from time to time it is difficult to avoid the feeling in connection with all these points that the smooth working of the machinery of limited companies has been considered more than the interests of their members or of the public. Whether or not on balance the present position is the most convenient from all points of view is a different question.

A Conveyancer's Diary.

Disclaimer of Burdensome Legacy and Acceptance of Beneficial Legacy under same Will.

THE question sometimes arises whether a person entitled to benefits under a will may repudiate part of those benefits which entail or may entail some liability upon the legatee or devisee and at the same time accept other benefits under the same will which do not carry any such burden.

The question seems in all cases to be one of construction and turns upon whether the testator intended that the benefits should be quite distinct or were meant to be taken as a whole.

Whilst the question is one of construction there are authorities by which the court will be guided in deciding such cases.

In *Guthrie* v. *Walrond* (1883), 22 Ch. D. 373, the facts were that a testator (*inter alia*) bequeathed to his son "All my estate and effects in the Island of Mauritius absolutely," and one of the questions for determination was whether the son was entitled to disclaim the gift as to certain leasehold properties which were subject to onerous covenants and to accept the gift of the remainder, which was subject to no burden.

Fry, J., laid down the principles to be followed as follows: "It appears to me plain that where two distinct legacies or gifts are made by a will to one person, he is, as a general rule, entitled to take one and to disclaim the other, but that his right to do so may be rebutted if there is anything in the will to show that it was the testator's intention that that option should not exist. For there are cases in which the court has held that a legatee has no right to take one gift and leave another, because it has discovered an intention on the part of the testator to couple the two gifts together. But in the present case the question arises upon a single and undivided gift, and it appears to me that such a gift is *primâ facie* evidence that it was the testator's intention that the gift should be one and that the legatee must either take it all or take none of it. It may be that, even in such a case, the court would sometimes be able to discover some subtle indication of an intention that the legatee shall be at liberty to take part of the gift and leave the rest; but I think that, *primâ facie*, the fact that there is only one gift is an indication that the legatee shall take either the whole or none at all."

In the well-known case of *Re Hotchkys* (1886), 32 Ch. D. 408, a testatrix gave "all my real and personal estate" to trustees "upon trust at their discretion to sell all such parts thereof as shall not consist of money," and out of the produce to pay her debts and funeral and testamentary expenses and invest the residue, "and shall stand possessed of such real and personal estate moneys and securities" upon trust "to pay the rents interest and dividends and annual produce thereof" to T during her life, with a clause of forfeiture on alienation, and after the decease of T the testatrix devised and bequeathed "my said real and personal estate and the securities upon which the same may be invested unto and to the use of V.C. his heirs executors administrators and assigns for ever according to the nature and quality thereof respectively." Part of the residuary estate of the testatrix consisted of a remainder in fee in certain property which fell in after her death. That property was subject to mortgages created by former owners and was out of repair, and the income therefrom was not sufficient to pay the interest on the mortgages and pay for the necessary repairs.

The tenant for life contended that she was entitled to disclaim the property in question.

The Court of Appeal held that the tenant for life could not disclaim that part of the estate and retain the remainder.

Cotton, L.J., in the course of his judgment upon this point, said: "... here what is given to the tenant for life and the remainderman is an aggregate and what results from that aggregate is given to both of them. In my opinion under those circumstances if the tenant for life likes to accept the gift and likes to accept it by entering into possession of part of the property, he cannot say I will take possession of this with the obligation thus thrown up on me, but at the same time I will reject another part of that one integral gift which is given to me by the testatrix."

Other authorities to the same effect are *Frewen* v. *Law Life Assurance Society* [1896] 2 Ch. 511 and *Re Baron Kensington* [1901] 1 Ch. 203.

I may mention some instances where the gifts were held to be distinct so that the legatee was able to disclaim one and take the other.

In *Andrews* v. *Trinity Hall, Cambridge* (1804), 9 Ves. 525, Sir W. Grant, M.R., said on this point: "Suppose a bequest to me of a house to live in it and afterwards in the same will a legacy of £100; and I find it inconvenient to live in the house; there is an intention to benefit me, intending to give me more than I find it convenient to accept of; but that shall not deprive me of the other benefit." But that was not really

a question of repudiating an onerous legacy in the sense that the property itself was subject to some burden. The house may have been worth a lot of money and the burden was personal to the devisee.

In *Long* v. *Kent* (1865), 12 L.T. 794, a testator by his will bequeathed to some of his daughters £1,000 each. Subsequently by codicil he bequeathed certain shares amongst all his children and the children of a deceased daughter. One of the daughters declined to accept any of the shares. It was held that the daughter might disclaim the shares (which had a liability upon them) and yet be entitled to her legacy of £1,000, the two gifts being distinct.

In *Warren* v. *Rudall* (1860), 1 J. & H. 1, a testator bequeathed a legacy to A and devised freeholds to A and his wife for their lives with remainders over, and after several intervening gifts bequeathed leasehold premises to A.

Sir W. Page Wood, V.-C., held that A was entitled to repudiate the bequest of leaseholds and accept the legacy and life interest in the freeholds.

The learned Vice-Chancellor said: "If I saw here any intention to couple the gift of the life interest in the freehold with the gift of the leasehold so as to make the acceptance of the burden a condition of the benefit, the case would be different. But the testator's intention seems to me to have been exactly the contrary. In each gift his meaning was to bestow a bounty, not to impose a burden." So far as regards the last sentence, I suppose that in every gift of leaseholds the intention is "to bestow a bounty and not to impose a burden," and it may be that at the date of the will the gift of leaseholds might bestow a bounty in excess of the burden but afterwards it might transpire that the burden exceeded the bounty.

It seems also from the authorities that an assignee from a legatee of benefits, some of which are subject to a burden, is bound by the election of the legatee to accept the burden of part where the legatee could not have accepted one part and disclaimed the other (see *Frewen* v. *Law Life Assurance Society*, *supra*).

On the other hand, if the legatee might have disclaimed the onerous legacy as being distinct from the beneficial legacy, an assignee of both will not be liable to accept the burden of the onerous legacy if he has done nothing to show that he accepted the onerous legacy (see *Re Loom* [1910] 2 Ch. 230).

Landlord and Tenant Notebook.

Fitness for Habitation: Scope of the Statutory Duty.

LEGISLATION imposing upon landlords letting property for habitation by persons of the working-classes the duty of seeing that the property is in all respects reasonably fit for human habitation has been in force since the 14th August, 1885. The enactment which first created the obligation was the Housing of the Working Classes Act, 1885, s. 14; the section was repealed and repeated by the consolidating statute of 1890, and has since been repealed and replaced several times by successive Housing Acts. Modifications have been made in the course of these events, the most important being the introduction of a prohibition against contracting out, and the enlarging of the landlord's obligation to the duration of the tenancy: it was at first limited to the commencement of the "holding." But the standard of repair is still that of "in all respects reasonably fit for human habitation," and the method of defining the class of property affected is still that of rental value, though boundaries have been changed.

It is somewhat unfortunate that both the last mentioned matters have become the subject-matter of judicial *obiter dicta* which are provocative of thought but hardly helpful to a practitioner as such.

The extent of the obligation was discussed in *Morgan* v. *Liverpool Corporation* [1927] 2 K.B. 131, C.A., in which the plaintiff sued his landlords for damages due to injuries said to be caused by its breach. It appeared that when he was opening the upper part of a window a sashcord broke, and the top of the window slipped and caught and injured his hand, while a pane also broke and a piece of glass struck and injured his eye. The defendants had had no notice that the premises were out of repair, and on this ground the Court of Appeal, reversing the judge of first instance, unanimously held that they were not liable; the statutory obligation merely imported a covenant into the tenancy, and the same defences were open to the landlord-covenantor as at common law. But on the question whether the disrepair would be within the statute members of the court were far from unanimous, and the *dicta* on the subject reveal a very striking divergence of opinion as to the meaning of very ordinary words.

Lord Hanworth, M.R., was, perhaps, more inclined to consider the point an arguable one than either of his brethren. After commenting on the apparent contradiction between the two qualifying expressions "in all respects" and "reasonably," and stating that he was loath to cut down the responsibility of landlords of this class of house, his lordship arrived at the conclusion that while such a house must have windows which open, the breaking of a sash-cord was so ordinary an incident that the defect could not make the house not reasonably fit for human habitation.

Lawrence, L.J., dealt very shortly with the matter; but also very emphatically. The utmost that could be said, the learned lord justice opined, was that the back room was rendered less comfortable; and to say that therefore the house was in some respects unfit for human habitation was somewhat fantastic.

The contrary opinion expressed by Atkin, L.J., is interesting because the matter is rather more deeply gone into in this judgment than in the others. The learned lord justice accepted a description of the standard suggested by counsel for the respondent, by which "if the state of repair of a house is such that by ordinary user damage may be caused to the occupier, either in respect of personal injury to life or limb or injury to health, then the house is not in all respects fit for human habitation." His lordship pointed out that this was not the case of a house which had many rooms and many windows, and considered that the question whether or not the only window in one of the only two bedrooms was capable of being opened with reasonable facility, and if not opened would have to remain shut, had a bearing upon the question whether that room was reasonably fit for human habitation.

The above interpretation clearly resorts to the device of having regard to the mischief which the enactment is designed to prevent, and I think the same can be said of the interpretation of the words defining the class of property favoured by Lewis, J., in a recent *dictum*.

From 1885 onwards, the statutes have defined the class by reference to intended user, rent and locality. The present enactment, s. 2 (1) of the Housing Act, 1936, commences with: "In any contract for letting for human habitation a house at a rent not exceeding (*a*) in the case of a house situate in the administrative county of London, forty pounds; (*b*) in the case of a house situate elsewhere, twenty-six pounds." (Liverpool and Birmingham, at one time specifically provided for, now fall within the "elsewhere".) There is no reference to members of the working classes in this section as there is in other provisions of the statute, but the idea is clearly to confer benefits on those whose lack of bargaining power and need for protection put them at an economic disadvantage in the matter of housing. The device of assessing means and need by reference to rent paid is an old one; in Victorian times, it was assumed that a prudent

man took a house at a rental of one-tenth of his income. And I notice that a well-known almanack, when dealing with medical fees, assumes that the medical profession still acts upon this principle : thus if the rental of the patient's house be £10 to £25, the general practitioner's fee for "Administering Chloroform" should be 15s.; if the rental be £25 to £50, 1½ guineas; if £50 to £100, 3 guineas. This scale makes no reference to the question whether rates are paid by landlord or tenant; nor does the Housing Act, 1936, s. 2 (1), and it was this point which gave rise to the recent *dictum*.

The case of *Jones and Jones* v. *Nelson* [1938] 2 A.E.R. 171, was, like *Morgan* v. *Liverpool Corporation*, *supra*, actually decided in the landlord-defendant's favour on the ground of absence of notice of disrepair; but an alternative defence contended that as the rent was 12s. 6d. a week and the property in Liverpool, the Act did not apply at all. To this the plaintiff answered that the landlord paid the rates and what he actually pocketed was 8s. 10d. a week, so that the "rent" did not exceed £26.

The plaintiff cited *Sheffield Waterworks Co.* v. *Bennett* (1872), L.R. 7 Exch. 409, which concerned the interpretation of a local Act fixing water rates on a graduated scale according to rent. The defendant owned some ninety-six houses let at inclusive rentals, he being rated in accordance with the local council's statutory resolution. He successfully contended that he was entitled to deduct the rates so paid from the rents payable for the purpose of assessment to water rate. Bramwell, B., illustrated his view by means of a *reductio ad absurdum*: suppose a man had two similar houses, one of which he occupied and the other of which he let at an inclusive rental, it would be ridiculous that he should pay more for water supplied to the latter because the rental allowed for rates. "Rent" in this private Act meant what the landlord pocketed, the value of the house to him.

Applying this decision to the matter before him, Lewis, J., said that he would be prepared to hold that "rent" in the Housing Act, 1936, s. 2 (1) meant the annual value, i.e., rent less rates, and not "rent payable."

This view was expressed *obiter*, but the question is one which affects a considerable number of people, so it is pertinent respectfully to suggest one or two reasons why the reasoning of the *Sheffield Waterworks Co.* v. *Bennett* decision should not apply to the matter of statutory liability to keep property fit for human habitation. Thus it may be observed that as regards the private Act dealt with in the one case, the Housing Act was passed *alio intuitu*. There may be some analogy, it is true, between the supply of houses to citizens and the supply of water to houses, but it is for present purposes a remote one. For when differentiating between houses and fixing water rates accordingly, the private Act merely endeavoured to ensure that every consumer should pay a fair price for the volume of water he and his consumed; the higher the rent, the bigger the house; the bigger the house, the more people in it; the more people in it, the more water they would use. Whereas the Housing Act differentiation aims at dividing tenants into those who cannot and those who can be expected to drive desirable bargains. Then the landlord of a house on which water rate is payable, even if it be payable by him, is unlikely to be influenced by the scale when fixing rental; but the landlord who is to be statutorily liable for repairs and rates will allow for these matters when deciding what consideration he should receive. Lastly, local rates vary from half-year to half-year, so that one effect of the view expressed in the recent case would be that some premises would be sometimes within and at other times outside the Act, which can hardly be what the legislature contemplated.

The next Quarter Sessions of the Peace for the Borough of Stamford will be held at the Town Hall, Stamford, on Wednesday, 26th October, at 11.30 a.m.

Our County Court Letter.

REPAIRS TO MOTOR CAR.

In a recent case at Loughborough County Court (*Pashley* v. *Brightman*), the claim was for £11 14s. 6d. for repairs to a motor car. The plaintiff's case was that, having examined the defendant's car, he found it required an overhaul. After dismantling, the engine was found to need re-boring, and the plaintiff was informed that the charge made by an engineer would be £10, plus any extra for accessories. The defendant agreed, subject to the charge not being much in excess of £10, and he also agreed to have the self-starter repaired. The plaintiff expected to make about 2 per cent. on the transaction. The engineer who did the repairs gave corroborative evidence, viz., that £10 was the accepted price for a re-bore, although it was possible to get it done more cheaply. An allowance was made to the plaintiff (in pursuance of an arrangement with him) of 10 per cent. on any new spare parts that were necessary. The defendant's case was that £7 or £8 was the price quoted by the plaintiff. The self-starter was beyond repair and no instructions were given for anything to be done to it. It was pointed out for the plaintiff that the self-starter was merely taken to pieces and cleaned at a cost of about 3s. 6d. It was necessary to charge the battery, as the self-starter and starting-handle both had to be used to set the engine "revving" after a re-bore. His Honour Judge Galbraith, K.C., gave judgment for the plaintiff for £9 9s. and costs.

THE QUALITY OF WHEAT.

In *James Duke and Son Limited* v. *Best*, recently heard at Winchester County Court, the claim was for damages for breach of contract. The plaintiffs' case was that in September, 1936, while the defendant was having threshed a crop of wheat, grown on his farm, the plaintiffs' manager took a sample and agreed to buy the corn at 40s. per quarter. The bought note was dated the 25th September and described the grain as "Garton's 60." Nevertheless, the wheat delivered was not of this description. The defendant denied that there had been any breach of contract. His Honour Judge Barnard Lailey, K.C., held that "Garton's 60" meant that the wheat had been grown from seed answering that description, and that it was sold by description. There had been no deliberate misrepresentation in order to obtain a higher price, and there were other reasonable explanations not involving fraud. The crop, however, was not "Garton's 60," and judgment was given for the plaintiffs for £40 and costs.

RETURN OF DEPOSIT TO PURCHASER.

In *Barlow* v. *Headington*, recently heard at Gloucester County Court, the claim was for £40 as money paid upon a consideration which had failed. The plaintiff's case was that, being the tenant of a fishmonger's shop at Newent (owned by the defendant), he had been offered the freehold of the property. In April, 1938, a contract was accordingly entered into, and the plaintiff paid £40 as a deposit. A condition of the contract was that a mortgage debt, not exceeding £431, should be taken over by the purchaser, viz., the plaintiff, whom the building society were prepared to accept as a borrowing member. After some delay, the defendant returned his part of the contract, duly signed, on the 12th May. The contract had been ante-dated, however, to the 9th April (when it was first submitted), and the name of the vendor had been altered from the defendant's name into the joint names of the defendant and his wife. Evidence was given (from the building society) that in July, 1937, a mortgage had been created to secure £431 17s. repayable by monthly instalments of £2 15s. 6d. On the 9th April, 1938, the amount due was £442 6s., and a receiver had been appointed on the 9th May. The amount due had since increased to £479, and there were outstanding claims by the sanitary authority

amounting to another £40. In April the society were notified that the tenant was desirous of taking over the property, but a transfer of the mortgage had not been considered, as the facts had not been placed before the society. His Honour Judge Kennedy, K.C., held that the contract was not binding, in the circumstances, and judgment was given for the plaintiff, with costs.

RECENT DECISIONS UNDER THE WORKMEN'S COMPENSATION ACTS.

MINERS' UNEXPLAINED DEATHS.

In two cases, at Atherstone County Court (*Turvey* v. *Pooley Hall Colliery Co., Ltd.*; *Powell* v. *The Same*), the claims were for awards of £300 and £470 8s. respectively, by the widow and the widow and infant child of two deceased miners. The latter had been found dead, in crouching positions, in a road known as "Old Fives Return." They had apparently been overcome by black damp, which was a tasteless, non-irritant gas, so that the men would not be aware of its presence until overcome. The deputy's evidence was that he had been in charge of No. 6 North District on the afternoon shift on the 23rd August, 1937. The deceased were both roadmen, who worked on contract, and they had finished work at 8.30 p.m. They were then offered a quarter shift to clear some dirt, i.e., a small fall, in "No. 6 Return." They were instructed to walk back down No. 5, but they had evidently gone along the "Fives Old Road" or "Old Fives Return." This airway was fenced off, but there was no danger board up, and the road was actually better than the present road. Corroborative evidence was given by the night deputy, and by the agent of the Warwickshire Miners' Association, who considered that the deceased men might have misunderstood the deputy's instructions, and had thus taken the wrong "Fives" road. A submission was made for the respondents that there was no evidence that the deaths had occurred in the course of the employment of the deceased men. The latter were found in a fenced-off portion of the mine, where they might have gone for a rest. Although this was a conjecture, the same remark applied to the applicants' case, viz., that the instructions had been misunderstood. His Honour Judge Donald Hurst made awards for the amounts claimed. See a similar case, noted under the above title, in our issue of the 26th June, 1937 (81 Sol. J. 520).

LUMP SUM FOR INJURY TO ARM AND LEG.

In *Holst and Co., Ltd.* v. *Howard*, at Lowestoft County Court, the respondent had been injured on the 15th August, 1936, while working as a pile-driver's labourer. The handle of a winch had fractured his right arm and right knee, and, although he could not kneel, the respondent could now do considerable work. The medical evidence was that there was some permanent weakness and limitation of the movement of the arm, in respect of which there was a disability of 15 to 20 per cent. The respondent's evidence was that he was now aged thirty-five and that he could not stand for long periods, and his arm "clicked" when he carried heavy articles. The sum of £300 had been agreed in settlement. His Honour Judge Rowlands held that, although a settlement was desirable, the amount suggested was inadequate. The agreement was therefore not recorded.

LUMP SUM FOR LOSS OF THUMB.

In *Perkins* v. *William Rigley and Sons, Ltd.*, at Nottingham County Court, an application was made for a review of compensation. The applicant's case was that, in 1936, he was working with a circular saw and injured the thumb of his right hand, losing two-thirds of it. Compensation had been paid to the amount of £60 and a sum of £250 had been offered, which the applicant was willing to accept in settlement. His Honour Judge Hildyard, K.C., heard the medical evidence and ordered the agreement to be recorded.

Practice Notes.

REFEREE'S REPORT UNDER LANDLORD AND TENANT ACT, 1927.

Where proceedings are commenced in the county court under Pt. I of the Landlord and Tenant Act, 1927, and are not transferred to the High Court, the matter shall "stand referred for inquiry and report"—unless the parties agree or it is otherwise prescribed—to one of the panel of referees selected by the county court: s. 21 (2). In *Freeman* v. *Dartford Brewery Company, Ltd.* (1938), 54 T.L.R. 672, du Parcq, J., delivered an important judgment on the form in which the referee should make his report.

In the High Court the procedure is by originating summons upon the hearing of which the judge may himself dispose of the matter, or, with or without an application, order the matter to be referred for inquiry and report to one of the panel of referees whom he may select (Ord. LIIID, r. 9). When the report has been filed, the judge shall adjourn the matter to be heard and determined by him in court (r. 16). He must, therefore, consider the report and hear the parties or their representatives, and may adopt or vary the report or refer it back and adjourn the matter for further consideration (r. 17). On the further hearing the judge shall "hear and determine the matter" and order and direct as he thinks fit.

Procedure in the county court is governed by Ords. XIX and XL of the County Court Rules, 1936. In the present case, the tenant applied that the court should adopt the report that a new lease for a specified period at a specified rent should be granted. The parties had agreed that the application should be transferred from Croydon County Court in order to obtain an authoritative decision upon the renewal of a lease of premises with an on-licence. Counsel for the landlords submitted that it was unreasonable to grant a new lease, and that the terms of the proposed lease were too favourable to the tenant. He read the report, which set out the history of the premises from 1895, recited that audited accounts from 1921 to 1937 had been put in, and stated that, during the eight days' hearing, considerable evidence was adduced by both sides. The referee declared that he was satisfied that statutory goodwill had become attached to the premises and that compensation would be inadequate; he thought that a new lease should be granted. The transcript of evidence was adopted as part of the report.

Du Parcq, J., sent the report back for the referee to set out his findings of fact, showing upon what evidence they were based, and stating the inferences drawn from those findings. He should also state the extraneous circumstances affecting the question of goodwill, the compensation figure, how it was calculated or estimated, and why it would be inadequate. In this case the referee (following the practice which the learned judge said was mistaken) had given his conclusions without his reasons, and without stating what evidence he accepted, and what rejected. To read through the whole of the transcript containing unnecessary and inadmissible evidence would put "an intolerable strain on a judge." "The learned referee," declared the learned judge, "is not merely to make an award as would an arbitrator, or give a verdict as would a jury; he must have reasons for his conclusions" (at p. 675). He should "put before the court a report which makes it clear what evidence was before him, what facts he found proved, what inferences he drew from those facts, and the result at which he arrived, having applied his view of the law." The report should be in such a form as to make it "not unreasonably difficult for the judge to review the referee's findings" (at p. 674).

To-day and Yesterday.

Legal Calendar.

26 September.—In the early eighteenth century the executions even of the humble had a certain state which gradually wore away as capital offences became more and more trivial. Thus on the 26th September, 1734, at Bristol, when a soldier was hanged for the murder of a man, and a woman for the murder of her child, the two were carried in a mourning coach with four horses to the place of execution on St. Michael's Hill, attended by a divine and a great concourse. A cart preceded them with their coffins. They both expressed their penitence. The man's comrades, to make sure that the surgeons should not get his body, saw it interred and put lime and water in the coffin.

27 September.—The great William of Wykeham, Bishop of Winchester, died on the 27th September, 1404, at South Waltham, exactly thirteen years after he had surrendered the Great Seal for the last time. Twice he had been Lord Chancellor, the first time under Edward III and the second time under Richard II, when the young king, throwing aside the council of regency which had been imposed on him, reclaimed his liberty of action. For two years the Bishop devoted himself to launching the new régime and then retired gladly from responsibilities which he had not sought.

28 September.—The eighteenth century idea of punishment is not altogether ours. For instance, we are told that on the 28th September, 1757, "John Allport, a grenadier of Napier's battalion, was shot at Brumpton near Chatham for desertion, of which crime he had often been guilty. Another deserter was made to attend his execution, but he is only to receive five hundred lashes by way of caution."

29 September.—By an Act of Parliament which came into force on the 29th September, 1742, it was made high treason to wash over or alter the impression on either side of any real or counterfeit shillings or sixpences to make them resemble guineas or half-guineas, or similarly, to disguise halfpence and farthings as shillings and sixpences. The penalties for passing false money were also tightened up, and £40 reward was offered for the discovery of any of the treasons and felonies set out in the Act.

30 September.—Lord Birkenhead died in London on the 30th September, 1930, at the age of fifty, eight years after resigning the Chancellorship.

1 October.—Serjeant Phesant was one of the judges who were appointed to the Common Pleas under the Commonwealth. His constitution seems to have been delicate, for throughout his career he was continually pleading ill-health to avoid difficult duties. He made it an excuse to resign the Recordership of London when he felt that the Parliament would prefer Serjeant Glynne to hold it. On the same plea he escaped appearing in defence of Sir Edward Herbert, Charles I's Attorney-General, when he was impeached. In June, 1649, he was allowed to stay at home instead of going on circuit, "being sickly." He died on the 1st October following.

2 October.—On the 2nd October, 1755, we are told "Roger Fisher of Froxfield, Wilts, was carried to gaol miserably wounded by a bailiff's follower in consequence of his stealing (two years ago) a bundle of rotten sticks out of a coppice in the neighbourhood, value sixpence, for which, being prosecuted to an execution, the cost amounted to eight pounds ten shillings whereby his wife and children were thrown on the parish."

The Week's Personality.

Many years must pass before the judgment of posterity finally decides whether the first Lord Birkenhead was a great man or only a brilliant man brilliantly successful, but whichever way the verdict goes, history cannot fail to recognise him as standing out in the life of his generation, a Chancellor whose tenure of the Great Seal marked an epoch in legal development. From beginnings which provided him with no automatic advantages, his sleepless energy drove him ever forward to successive achievements. Those within the charmed circle of his family and friends knew the accessible kindness which was a real part of his nature, but the world at large saw only a man of restless ambition, ruthless determination and boundless self-confidence. His tongue, irresistibly persuasive or mercilessly venemous, according to the mood or the occasion, was at once the instrument of his progress and the reproach of his enemies. Tall and athletic, with a type of good looks which appealed to very many, he had an ease of manner which he could turn at will to the most crushing insolence. His versatility was astounding, so that, when he reached the Woolsack, few suspected the qualities which were to make him so brilliantly successful as Chancellor.

Well Defended.

When the case for the prosecution had closed at the Clerkenwell Police Court recently, Mr. Bernard Campion, K.C., the magistrate, observed: "These men are not defended. I am defending them. I make a submission on their behalf that there is no evidence against them. What do you say?" The detective sergeant in charge of the case had not enough to say to prevent its being dismissed. Avory, J., once acted a telling little scene when no one could be found to defend a poor prisoner. "Oh, very well," he said, "if nobody else will defend you, I suppose I must do it myself—that is, if I haven't forgotten how." After his cross-examination of the prosecution's witnesses the man was acquitted. It would have been picturesque if he could have carried the defence as far as a Detroit judge not very long ago when there appeared before him a man charged with carrying concealed weapons, but too poor to brief counsel. "Never mind," said the judge, "I'll be your attorney." After the prosecutor's evidence had been called, he stepped down into the body of the court and gesticulating to his empty chair, said: "If it please the court I move dismissal on grounds of illegal search and seizure." Then returning to his place, he said: "Counsel's motion is granted; case dismissed."

Spotting "Mugs."

Mr. Bernard Campion, sitting at Clerkenwell, had something to say about "mugs" recently. "There are two classes of people who have money," he said, "those whom it is difficult to induce to part with it and those who are easy. If I were a trickster, I should pick the fellow who parted easily and I should call that man a mug." Lord Chancellor Northington (1708–1772) once got a curious tip as to how the trickster of those days picked a "mug" or "flat." One rainy afternoon in Parliament Street a confidence man tried the ring dropping trick on him, got into conversation, invited him to a drink at a neighbouring coffee-house and was soon joined by his confederates. After a game of hazard had been proposed, the Chancellor heard one of them say to the other: "Damn the dice; he is not worth the trouble. Pick the old flat's pocket at once." At that point he thought it was time to discover himself, but promised not to prosecute if they would tell him what made them think he was a "flat." With great deference they replied: "We beg your lordship's pardon, but whenever we see a gentleman in white stockings on a dirty day we consider him a capital pigeon and pluck his feathers as we hoped to do your lordship's."

Notes of Cases.

Judicial Committee of the Privy Council.

Bawa Faqir Singh *v.* King-Emperor.

Lord Wright, Lord Romer, Lord Porter, Sir Shadi Lal and Sir George Rankin. 21st July, 1938.

India—Criminal Law—Procedure—Pardon—Tender by Magistrate to Person Accused with Others on Condition of his disclosing Information—Approver Examined by Magistrate—Subsequent Application by Prosecution to Withdraw Charges against Approver—Right of Accused to Trial before Sessions Judge—Code of Criminal Procedure, ss. 337, 494.

Appeal from a decision of the High Court, Lahore.

The appellant was convicted and sentenced for conspiracy and for using as genuine a forged document known to be forged. The ground of the present appeal was that the special magistrate had no jurisdiction to try the case, since it came within the provision of s. 337 of the Code of Criminal Procedure, and could only be lawfully tried in the circumstances of the case by the High Court or the Court of Session. In May, 1928, the District Magistrate, Lahore, acting on a police report, directed the issue of warrants against six persons, including the appellant and two other persons, Sain Dass and Vishwa Mitter. Sain Dass, having accepted an offer to make a full and true disclosure of the whole of the facts within his knowledge regarding the "criminal activities" of the appellant and other persons, the Governor in Council directed that, on condition of his making such a disclosure, no proceedings would be taken against him with respect to the offences in question. After various protests and objections by the appellant, the Public Prosecutor applied to the special Magistrate, to whom the case had been transferred, for permission to withdraw from the prosecution of Sain Dass. The special magistrate allowed the Public Prosecutor to withdraw the case under s. 494 of the Criminal Procedure Code. Sain Dass was then called as a witness for the prosecution before the special magistrate. Later, Vishwa Mitter was also offered a conditional promise of pardon by a magistrate, the same procedure being followed as in the case of Sain Dass. Vishwa Mitter having accepted the offer, an application was then made to the special magistrate for leave to withdraw the case against Vishwa Mitter under s. 494 of the Code. In due course the appellant was tried and, with one other of the accused, found guilty. During his trial the appellant claimed that he was entitled to be committed for trial under s. 337, but his objections were overruled, eventually by a Divisional Bench of the High Court, with the result that the trial continued and was concluded before the magistrate, the appellant and one other accused being convicted. *Cur. adv. vult.*

Lord Wright, giving the judgment of the Board, said that the question was whether s. 337 had been brought into operation by what was done by the magistrates when they offered a tender of pardon to the two approvers, and by what happened subsequently. Section 337 was limited to certain offences, including those triable exclusively by the High Court or Court of Session, or any offence punishable with imprisonment which might extend to ten years, those latter words covering the offences with which the appellant was charged. The section empowered certain magistrates to tender to any person concerned in or privy to an offence a pardon on condition of his making a full and true disclosure of what he knew about the offence. By s. 337 (2A): " . . . where a person has accepted a tender of pardon . . . the magistrate . . shall . . . commit him for trial to the Court of Session or High Court, as the case may be." Section 494 enables the Public Prosecutor with the consent of the court to withdraw from the prosecution before the jury return a verdict or, where there is no jury, before judgment is pronounced. The Crown claimed that it was under s. 494 that the charge was withdrawn by the Public Prosecutor, that that was done with the consent of the court, and accordingly that the accused had no right to claim that he was entitled under s. 337 to trial by the High Court or a Sessions Court. In their lordships' judgment, what had been done came substantially within s. 337. The requirements of sub-s. (2A) then automatically came into force. The fact that the magistrate had not recorded his reasons as required by sub-s. (1A) was merely an irregularity on his part, and the right of the accused or the approver could not be affected because the magistrate had failed to comply with a requirement imposed for the benefit of the accused. Nor was it material that the magistrate, in tendering the pardon, had done so after consulting the local government and with its authority. The essential fact was that the pardon was tendered to the approver by the magistrate. If the manner in which the tender of pardon was made followed in substance the method prescribed in s. 337, then the section must apply. The appeal must be allowed and the conviction and sentence set aside.

Counsel: *J. M. Pringle*, for the appellant; *G. D. Roberts*, K.C., *W. Wallach* and *J. Megaw*, for the Crown.

Solicitors: *T. L. Wilson & Co.*; *The Solicitor, India Office.*

[Reported by R. C. Calburn, Esq., Barrister-at-Law.]

Rani Huzur Ara Begam and Another *v.* Deputy Commissioner, Gonda, and Others.

Lord Romer, Sir Shadi Lal and Sir George Rankin. 22nd July, 1938.

Taluqdari Estate—Customary Devolution of Estate upon Single Heir—Non-taluqdari Property belonging to same Family—Presumption that Governed by same Rule of Succession.

Consolidated appeals from a judgment and decrees, dated 21st April, 1936, of the Chief Court of Oudh at Lucknow (King and Zia-ul-Hasan, JJ.) reversing a decision of the same court in its original civil jurisdiction.

One, Raja Mohammad Mumtaz Ali Khan, Taluqdar of Utraula, had in 1930 obtained judgment for a sum of money in an action which he brought against one, Raja Saadat Ali Khan, Taluqdar of Nanpara, and the award on which the decree was based provided that any sum of arrears of the debt remaining unpaid at the judgment creditor's death should be paid to his heirs. The taluqdar of the Utraula estate was named in List 2 of the taluqdars prepared under s. 8 of the Oudh Estates Act, 1869, whose estate, according to the custom of the family on or before 13th February, 1856, ordinarily devolved upon a single heir. The judgment creditor died before the judgment debt had been fully paid, leaving him surviving four persons who were his heirs under Mahomedan Law, namely, his widow, his minor daughter and two minor sons. The widow having made two applications, on behalf of herself, and, as she claimed, her infant daughter, for execution of the decrees, the judgment debtor filed objections on the ground that those two applicants had no right to execute the decree. The Court of Wards also objected to the applications, contending that all the judgment creditor's estate, consisting of his movable and immovable property, devolved upon his elder son under the Act of 1869. The trial judge, as to both applications, held that the widow had a right to execute the decree, and that no custom of single heir succession could be made applicable to movable property. Against that decision four appeals were preferred to the Chief Court, the Deputy Commissioner, Gonda, and the judgment creditor's eldest son, each appealing in respect of the two applications for execution. The widow and infant daughter now appealed to His Majesty in Council.

Sir Shadi Lal, giving the judgment of the Board, said that s. 10 of the Act of 1869 provided that the court should take judicial notice of List 2 and regard as conclusive the fact that the person named in it was taluqdar. In other words, there was a pre-existing custom attaching to the estate on which its inclusion in List 2 was based. There was,

therefore, an irrebuttable presumption in favour of the existence of the custom of the family by which the estate devolved on a single heir, but the provision as to the conclusiveness of the custom was confined to the estate coming within the ambit of the statute. It did not apply to any property which was not comprised in the estate or taluqa. If immovable property forming part of the taluqa was governed by the custom of single heir succession, there was no *primâ facie* reason why immovable property, which was not comprised in the taluqa, should follow a different rule. It had been decided by the Board that there was a presumption that the rule as to succession to a taluqa governed also the succession to non-taluqdari immovable property: *Murtaza Husain Khan* v. *Mahomed Yasin Ali Khan*, 43 I.A. 269. The question arose whether there was any other rule in the matter of succession to the non-taluqdari movable property left by the taluqdar. It was argued that the necessity under s. 7 for making special provision for the devolution of heirlooms arose because the legislature contemplated that movable property of a taluqdar would devolve not on a single heir along with the estate, but upon the persons who might be his heirs under the ordinary law. The object of the section was to enable the taluqdar to ensure that the heirlooms mentioned in the inventory should pass along with the estate in all circumstances, but it did not warrant the inference that the legislature intended that the descent of movable property, for which no inventory was made, should be governed by the ordinary law. The result was that the non-taluqdari property, immovable as well as movable, was governed by the custom applicable to the taluqa, as there was no evidence to prove a custom to the contrary, and the appeals must be dismissed.

COUNSEL: *J. P. Eddy*, K.C., *M. H. Rashid* and *M. P. Srivastava*, for the appellants; *Cyril Radcliffe*, K.C., *W. Wallach* and *Charles Russell*, for the Deputy Commissioner, Gonda, in charge of the Court of Wards, Utraula Estate; *L. P. E. Pugh*, K.C., *S. Hyam* and *Sirao Husain*, for the elder son; *C. Sidney Smith*, for the Deputy Commissioner, Gonda, in charge of the estate of the younger son.

SOLICITORS: *Nehra & Co.; Solicitor, India Office*; *Barrow, Rogers & Nevill*; *Hy. S. L. Polak & Co.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Sammut and Another *v.* Strickland.

Lord Maugham, L.C., Lord Sankey, Lord Atkin, Lord Wright and Sir Sidney Rowlatt. 25th July, 1938.

MALTA—CONSTITUTIONAL LAW—SOVEREIGNTY OF CROWN—POWER TO LEGISLATE—GRANT OF CONSTITUTION—POWERS REMAINING TO CROWN.

Appeal from a judgment of the Court of Appeal of Malta, reversing a judgment of the Civil Court of Malta, First Hall.

The respondent, The Hon. Mabel Strickland, as attorney for her father, Lord Strickland, brought proceedings against the appellants, Edgar Sammut, Collector of Customs, Malta, and Sir Harry Luke, Lieutenant-Governor of Malta, for a refund of 2s. 9d., paid under protest in respect of Customs duties imposed on certain articles imported into Malta in connection with Coronation festivities by the Temporary Additional Duties Ordinance, No. 27 of 1936, enacted by the Governor of Malta under powers conferred by the Malta Letters Patent Act of the 12th August, 1936. The respondent's contention was (A) that the Crown had never acquired power to legislate for Malta, and (B) that in any case, by the Constitution granted to Malta in 1921 (the principal Letters Patent), such power was surrendered except with regard to reserved matters which did not include the Ordinance of 1936. *Cur. adv. vult.*

LORD MAUGHAM, L.C., giving the judgment of the Board, said that by the Letters Patent of the 12th August, 1936, His Majesty revoked the principal Letters Patent of 1921 and made provision for the government of Malta, including the exercise of legislative powers, by the Governor under s. 15 thereof, which provided: "The Governor may make laws for the peace, order, and good government of Malta." The Governor then purported by Ordinance 27 of 1936 to impose Customs duties on certain foreign articles imported into Malta, and it was not disputed that the Ordinance was within the powers purported to be conferred on the Governor by the Letters Patent of the 12th August, 1936. It was argued for the respondent, *inter alia*, that in any case the effect of the principal Letters Patent was to extinguish all legislative and taxation authority except with regard to those matters specially reserved, and that power to restore authority to the Crown in non-reserved matters could thereafter be granted only by Parliament. Whatever the juridical position beforehand, it was certain that in 1813 a decisive step was taken when Sir Thomas Maitland, on his arrival as Governor in Malta, published a declaration in the name and on behalf of King George III to the effect that the King had determined "henceforth to recognise the people of Malta and Gozo as subjects of the British Crown and as entitled to its fullest protection." Counsel for the respondent was acting wisely when he admitted without hesitation that since 1813 the sovereignty of the island had been in the Crown. As to the true nature of the Crown's title to the sovereignty of Malta, the respondent's first point was founded on the proposition that the prerogative of the Crown to legislate by Orders in Council and Letters Patent for the Government of a possession (using the word in the widest sense) was restricted to cases where the possession was acquired either by conquest or by cession; but the word cession was employed by the respondent in that connection in a limited sense so as to exclude a voluntary cession by the general consent of the people. There seemed to be no authority in any case or recognised textbook on constitutional law for that distinction, and there was no valid ground for the distinction suggested between the case of Malta and other cases of cession. As to the respondent's second point, it was suggested as a general proposition that, whenever responsible government was conceded by the Crown to a colony or possession, the royal prerogative to legislate by Letters Patent or Orders in Council came to an end and was irrevocably lost or surrendered by the Crown, unless a special reservation was made in the grant. There was no authority for that view, and the statements in the textbooks relied on in support of it were capable of a different meaning. The case relied on was *Campbell* v. *Hall* (1774), 1 Cowp. 204. Their lordships did not agree that there was an established constitutional principle based on *Campbell* v. *Hall*, *supra*, that, the grant of representative institutions once made, the Crown was immediately and irrevocably deprived of its right to legislate by Letters Patent or Orders in Council unless there was an express reservation of a right to that effect. The true proposition was that, as a general rule, such a grant without the reservation of a power of concurrent legislation precluded the exercise of the prerogative while the legislative institutions continued to exist. Nor was it in doubt that a power of revoking the grant must be reserved or it would not exist. The proposition could not be accepted that, after the revocation of the principal Letters Patent on 12th August, 1936, the Crown was divested of all legislative authority with regard to Malta except perhaps with regard to matters expressly reserved by the principal Letters Patent. The appeal must be allowed.

COUNSEL: *The Attorney-General* (Sir Donald Somervell, K.C.), *Kenelm Preedy*, and *John Foster*, for the appellants: *A. Berriedale Keith* and *Cyril Salmon*, for the respondent.

SOLICITORS: *Burchells*; *Blount, Petre & Co.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

[For Table of Cases previously reported in current volume, see page xx of Advertisements.]

Northern Ontario Power Company Limited *v.* **La Roche Mines Limited and Another.**

Lord Atkin, Lord Thankerton, Lord Russell of Killowen, Lord Macmillan and Sir Lyman Poore Duff (Chief Justice of Canada). 27th July, 1938.

ONTARIO—CONTRACT FOR SUPPLY OF ELECTRICITY TO MINING PROPERTY—COVENANT BY ORIGINAL CONSUMER TO USE ONLY SUPPLIER'S POWER DURING MINING LIFE OF PROPERTY—ASSIGNMENT OF INTEREST BY CONSUMER COMPANY—VOLUNTARY LIQUIDATION—REFUSAL OF SUCCESSOR TO USE SUPPLIER'S POWER—WHETHER ORIGINAL CONSUMER LIABLE FOR DAMAGES—PERIOD OF LIABILITY—PUBLIC UTILITIES ACT, 1927 (R.S.O.), c. 249, PART V.

Consolidated appeals from a decision of the Court of Appeal, Ontario.

In December, 1931, a company called La Roche Mines, Ltd., entered into a contract with Northern Ontario Power Co., Ltd., for the supply of electric power. The agreement consisted of a printed form containing general and special conditions. The La Roche Company were then the owners of two mining claims. By the contract, the Power Company were authorised by the La Roche Company to connect their electric system with the wiring of the consumer at a point on the latter's property convenient to the Power Company's lines. By para. 13 the benefits and obligations of the contract were to enure to and be binding upon the successors of the original parties for the full period of the contract, but the contract was not assignable by the consumer except with the written consent of the Power Company. A special condition as to the period of the contract provided: "This agreement . . . shall extend for the mining life of the properties now or hereafter operated or owned or controlled by the consumer in the Porcupine district." The consumer further agreed to pay for at least a minimum quantity of 50 h.p. for the first year of the agreement. By para. 16, the contract was to enure to the benefit of and be binding on the parties and their respective successors and assigns. From the 17th January, 1932, power was transmitted to and received by the La Roche Company under the contract until the 31st May, 1932, when work on the mining claims was suspended. Thereafter it was supplied, after interruptions, to a company to which the La Roche Company had granted options on the mining claims, the supply continuing to various other companies in control of the claims down to the date of the trial. In 1934 the La Roche Company sold its said mining claims to a company called Delnite Mines, Ltd., to whom no assignment was made of the power agreement, as they did not wish to become bound by it or entitled to the benefit of it. On the 30th November, 1934, the La Roche Company wrote to the Power Company stating that they no longer had any ownership in the property, that if any power were used it would be by the Delnite Company, and that they and not the La Roche Company would be responsible, as the latter were proceeding to distribute their assets and surrender their charter. The La Roche Company claimed to be no longer bound by the contract, while the Power Company claimed that they were. The La Roche Company went into voluntary liquidation in November, 1935, and the Power Company sent in a claim for damages for breach of the contract of December, 1931, and later brought the present action claiming that they had suffered loss and damage and been deprived of the profits to which they would have been entitled under the contract. The defendants pleaded that, in the circumstances, the contract had ceased to be binding on the parties, and they further pleaded a defence under Pt. V of the Public Utilities Act (R.S.O.), 1927, limiting their liability to a period of ten years.

LORD RUSSELL OF KILLOWEN, delivering the judgment of the Board, said that, as regarded the effect of ss. 22 and 59 of the Public Utilities Act, their lordships agreed with the view expressed by the Court of Appeal and the grounds upon which that view was based. They saw no reason for holding either that the capacity of the Power Company to contract for the supply of a public utility was not by the sections restricted to a period not exceeding ten years, or that a contract which purported to extend beyond that period was not valid and binding during the period. As to the question of construction, it was to be noted that the word "consumer" meant throughout only the La Roche Company. The consumer was bound by the negative provision that during the continuance of the contract no system of electricity other than that furnished by the Power Company should be used "in said premises." As to that negative provision, on the one hand it was said that, so long as the claims had mining life in them, then, no matter who operated or owned them, the contract continued, and with its continuance the negative obligation remained binding on the La Roche Company. That was the view adopted by the Court of Appeal. On the other hand it was contended that the period of contract clause was so worded that the mining life which it contemplated was in the events which had happened the mining life while the properties were being operated or owned by the La Roche Company. Their lordships thought that the latter view was the correct view. The appeal must fail, and the cross-appeal of the La Roche Company must succeed.

COUNSEL: *R. S. Robertson*, K.C., and *Frank Gahan*, for the appellants; *W. N. Tilley*, K.C., *R. F. Wilson* and *B. U. McCrimmon*, for the respondents.

SOLICITORS: *Blake & Redden; Charles Russell & Co.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Obituary.

MR. J. S. JACKSON.

Mr. John Starkie Jackson, solicitor, a partner in the firm of Messrs. Jackson & Saul, of Carlisle, died recently at Carlisle, at the age of seventy-seven. Mr. Jackson was admitted a solicitor in 1883. He was a director of the Haydock Park and Bogside Racecourse Companies.

MR. D. W. MEYLER.

Mr. David William Meyler, solicitor, senior partner in the firm of Messrs. Jenkinson, Meyler & Campbell, of Frederick's Place, Old Jewry, E.C., died in London on Friday, 23rd September, at the age of seventy-five. Mr. Meyler was admitted a solicitor in 1904.

MR. F. D. WISE.

Mr. Francis Dickson Wise, retired solicitor, of Ripon, Yorks, died on Sunday, 25th September, at the age of ninety-five. Mr. Wise, who was admitted a solicitor in 1864, practised at Ripon with his father, the late Mr. Samuel Wise, and later in partnership with the late Mr. W. H. Hutchinson. He succeeded his father as Registrar of the Diocese of Ripon, and also as Clerk of the Peace for the Liberty of Ripon. He was Hon. Secretary of the Ripon and District Hospital for more than fifty years.

OFFICIAL STATISTICS.

One of the major activities of the Stationery Office is the publication of official statistics dealing with a very wide range of topics. The number of volumes containing these figures runs into several hundreds every year, and the tracking down of the material available on any particular subject would be no easy matter if there were not in existence a systematic index covering the whole field of published official statistics. This index, which is issued annually under the title of the *Guide to Current Official Statistics*, provides a ready means of ascertaining the nature of the information available on any subject and the official publication in which it is contained. Volume sixteen, relating to the official statistics published in 1937, contains 106 pages, and is obtainable from H.M. Stationery Office, or through any bookseller, for one shilling (by post 1s. 5d.)

POINTS IN PRACTICE.

Questions from Solicitors who are Registered Annual Subscribers only are answered, and without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the Staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 29-31, Breams Buildings, E.C.4, and contain the name and address of the Subscriber. In matters of urgency answers will be forwarded by post if a stamped addressed envelope is enclosed.

T.A., 1925, s. 37—Separate Set of Trustees—Implied Vesting Declaration not expressly Excluded—Vesting of Freeholds.

Q. 3586. In a deed of appointment of separate trustees under the section of the Act referred to above, a request has been made for conveyances of the freehold property from the existing trustees to the new trustees, and the reply has been given that such conveyances are unnecessary as the deed of appointment itself operates to convey such freehold property. The deed of appointment itself, however, in its operative part states that upon due effectuation of the conveyances and transfers to the new trustees of the said trust property the existing trustees shall be discharged from the trusts and the deed of appointment also recites that it is intended the trust property be conveyed and transferred to the new trustees. The deed of appointment was settled by counsel and the quotations referred to appear to imply the necessity for conveyances of the freehold land referred to in a deed, apart from the deed of appointment itself. I shall therefore be glad if you will let me know your views as to whether the freehold property in question can properly be said to pass under the deed of appointment or whether separate conveyances by deed are necessary in respect thereof.

A. We express the opinion that provided (as we understand was the case) a *new* trustee or trustees were appointed, and the separate trustees were not selected from existing trustees, the implied vesting declaration operated to vest the freeholds appropriately. Note the word "new" in the initial line of T.A., 1925, s. 40 (1). We do not see any "*express* provision to the contrary" (see T.A., 1925, s. 40 (1) (*b*)); there is merely an implication to the contrary.

Domicile—Estate Duty.

Q. 3587. A's domicile of origin was in England, about seventeen years ago he went to reside in France and his home has been there ever since that time. He was a partner in a French business firm in Paris, and his permanent residence was there. He has now died in Paris, his assets there consisting of his share in such partnership and household furniture, but he also left property and investments in England. In his will made by an English solicitor in Paris and dated the 26th November, 1930, there is a clause as follows: "I hereby declare that I am a British subject that my domicile is at (giving his original home address in England) and that my sojourn in the Republic of France is only of a a temporary nature; that I have not at any time and never shall have the slighest intention of remaining permanently in France." As domicile is a matter of intention and that intention is clearly expressed in this will, it would appear that testator's domicile was in England. At the same time, having a permanent home in France and having lived and had his business there for seventeen years, the actual facts would appear to contradict this, and duty will be payable in France on his assets there. Under these circumstances is it your opinion that estate duty will also be payable in England on his French assets, as well as upon his English assets, and that the only relief will be the deduction from his estate of the actual amount of duty paid in France upon his French assets?

A. The tendency of modern decisions, following on *Winans* v. *Att.-G.* [1904] A.C. 287, is to emphasise the importance of the domicile of origin and to attach less significance to residence, however long, as an indication of a change of domicile (*Att.-G.* v. *Yule* (1931), 145 L.T. 9; *Ramsay* v. *Liverpool Royal Infirmary* [1930] A.C. 588). A change of domicile must be established by both residence and intention. In the present case there is the fact of residence in France for seventeen years; but this is somewhat discounted by the fact that A had business interests in that country which required him to reside there; and presumably there is no definite evidence to show that if he had retired, or his business interests had ceased, he would have continued to make his home in France. On the question of intention, the statement in the will is definitely against an intention on A's part of making France his permanent home. Such statements though admissible are not, however, conclusive: see *Re Annesley; Davidson* v. *Annesley* [1926] Ch. 692; *Ross* v. *Ross* [1930] A.C. 1. But unless it can be shown positively that A had given up his domicile of origin and settled in France, i.e., made his permanent home there with the intention of living there for an indefinite period, his English domicile of origin would continue to attach. It is not stated what ties with England still remained or whether A had a wife and family living with him in Paris, and if he had children, whether they were educated in England or not; but on the facts given, it would seem that A still retained his English domicile of origin and on that view, British estate duty is payable on his English property and also on his property abroad (except immovable property). An allowance can be claimed against the foreign movable property in respect of: (*a*) foreign debts (Finance Act, 1894, s. 7 (2)); (*b*) additional expenses (not exceeding 5 per cent.) of administering the foreign property incurred by reason of its situation abroad (*ibid.*, sub-s. (3)); and (*c*) any death duty payable abroad in respect of such property (*ibid.*, sub-s. (4)).

Secret Trust—Settlement—Position on Death of Tenant for Life and Cesser of Settlement—*Re Bridgett and Hayes' Contract*, 71 Sol. J. 910—L.P. (Amend.) Act, 1926, Sched. Addition to L.P.A, 1925, Sched. I, Pt. II, para. 3.

Q. 3588. In 1919 a house was conveyed to A and B in fee simple as joint tenants. On the following day they executed a declaration of trust that they held the house in trust for their mother and father (C and D) during their joint lives and for the life of the survivor and after the death of such survivor upon trust for sale. D died in 1937. C died shortly afterwards intestate and was, presumably, tenant for life. No vesting instrument has at any time been executed. Letters of administration in respect of C's estate have been taken out but no mention of the settled land was made in the administrators' oath. Should not a grant of administration to special administrators in respect of settled land be also obtained in order to show a title to sell the house? If not, who is empowered to sell?

A. On 1st January, 1926, the legal estate vested in C and D as joint tenants: L.P.A., 1925, Sched. I, Pt. II, para. 3 and para. 6 (*c*); S.L.A., 1925, s. 19 (2). On the death of D the legal estate vested in C as survivor. With the death of C the legal estate vested in her *general* personal representatives as the settlement then came to an end, there being a reversionary trust for sale. The grant in C's estate quite rightly did not refer in any way to settled land and no limited grant

can be obtained (see *Re Bridgett and Hayes' Contract*, 71 SOL. J. 910; [1928] Ch. 163). Title can, therefore, be made by C's general personal representatives as such, or those personal representatives can assent in respect of the trust for sale so that title may be made thereunder. The ruling in *Re Bridgett and Hayes' Contract* is equally applicable to intestacy as it is to the case of a testate tenant for life (*In the Estate of Bordass* [1929] P. 107). Yet a third course is open to A and B. They could take advantage of the amendment of L.P.A., 1925, Sched. I, Pt. II, para. 3 effected by L.P. (Amend.) Act, 1926, Sched., and if the purchaser has no notice of the trust make title to the purchaser notwithstanding the divestment which took place in 1926.

Conveyancing Costs—SEARCHES.

Q. 3589. Is the scale fee for conveyancing, etc., under the Solicitors' Remuneration Order, 1881, intended to include work done relating to searches in the course of purchasing property, because the statutory fees were settled before searches were customary, as is now the case, and searches involve a considerable amount of work, including writing to the borough or rural district council, county authority, the Land Registry for land charges, tithe rent charge, annuities, land tax, and bankruptcy.

A. Notwithstanding that the scale of fees under the Remuneration Order of 1881 was settled before the necessity for searching became so urgent as it is now, it is feared that the work involved must be regarded as covered by the scale. The scale fee covers the investigation of the title, and part of the work entailed in investigating is the searching for land charges and other matters affecting the title. This view, moreover, is supported by an opinion of the Council of The Law Society given on the 1st November, 1900.

Will—ANNUITY—PAYMENT "FREE OF ALL DEDUCTIONS"—INCIDENCE OF LEGACY DUTY.

Q. 3590. A testatrix by her will, which contained, *inter alia*, the following clauses: (4) I bequeath to my companion A at present residing with me the sum of £100 free of legacy duty and all other (if any) duties payable upon or by reason of my death; (5) I further bequeath to the said A an annuity of £156 during her life to be paid free of all deductions whatsoever, etc. In cl. 5 there is no specific mention of the annuity being given "free of legacy duty." The solicitor to the estate informed the annuitant by letter that "The annuity was not bequeathed to you free of duty therefore this duty (i.e., legacy duty) has to be paid by you out of the annuity." On behalf of the annuitant it has been contended that the testatrix intended the widest construction possible to be placed on the words "*free of all deductions whatsoever.*" On the other hand, the solicitor to the estate holds that these words were inserted to enable the annuity to be paid *free of tax*. The case of *Smith* v. *Anderson* has been quoted in support of the estate, and further that "in this case there would otherwise have been a liability for deduction for income tax." On behalf of the annuitant it has been contended that "the word 'deduction' does not include income tax because income tax is not a deduction but a payment" ("Williams on Executors," vol. II, footnote (U), p. 969, 12 ed.). The case of *Smith* v. *Anderson* rules that where a testator gives annuities and directs them to be paid "without any deduction whatsoever" and where from the nature of the property out of which the annuities are to be paid there could be no deduction *except* in respect of legacy duty then the annuities shall be paid clear of legacy duty (1828, 4 Russ. 352). Will you please advise as to whether, in view of the foregoing, legacy duty should be deducted from the annuity?

A. As it is the duty of the trustees to *deduct* income tax when paying the annuity (*In re Crawshay* [1915] W.N. 412), it would appear that the annuitant must in this case bear the legacy duty. We would observe that in 1828 there was no income tax.

Registration of Debenture Stock.

Q. 3591. Clients of ours hold some debenture stock. For part of it they have a stock certificate in the names of A, B and C, for the remainder they hold a stock certificate in the names of C, A and B. The stock is the same stock and the holders' names, addresses and descriptions are the same in both certificates except for the order in which they appear. We prepared one transfer for the whole which the company refuse to register saying that from their point of view, each certificate represents a separate "account" owing to the names being in a different order and they contend there should be a separate transfer for the stock represented by each certificate. The company's point seems contrary to general conveyancing practice and we shall be glad to have your views. We ought to add that in this case the difficulty is being overcome as the company have arranged to accept a request to consolidate the two certificates into one holding and the one transfer already prepared and signed will then be accepted; but the point seems to be one of general interest.

A. The point of view taken by the company is contrary to conveyancing practice, as the questioners suggest. There may be some justification for their attitude in the case of separate blocks of shares or debentures, which have definitive numbers. Stock or debenture stock, however, is purchased in amounts, i.e., so many pounds' worth is transferred at a time. The company were seeking to obtrude their internal organisation into the affairs of outsiders. The method adopted of solving the difficulty appears to be the best in the circumstances.

Refund of Excess Rent.

Q. 3592. The owner of the house of which the rateable value was on the 1st April, 1931, and still is £10 per annum, came vacant in 1936, and was not registered in accordance with the Act of 1933. It was let in 1936 on a weekly tenancy at 11s. 6d. per week including the rates. This rental amounts to more than the standard rent plus the permitted increase. We have advised the owner that a tenant can claim a refund of the excess over the standard rent plus the permitted increase for the period since November, 1937, and that the house remains controlled by the Rent etc. Acts. Will you be good enough to inform us whether this is correct.

A. The advice was correct. In view of s. 2 (1) of the Act of 1933, the dwellinghouse was not decontrolled by the owner obtaining vacant possession in 1936.

Reviews.

Reasonable Doubt. By GEOFFREY DE C. PARMITER. 1938. Demy 8vo. pp. xv and (with Index) 331. London: Arthur Baker, Ltd. 15s. net.

In the first fourteen pages of this book the author asks a question—have the technicalities and the complexities of modern life made it virtually impossible for the untrained juryman to appreciate properly the evidence given in criminal cases? In the remainder of the book he provides the reader with the material for formulating an answer. For this purpose he examines in detail the trials of Alfred Rouse, Adolf Beck, Steinie Morrison, Dr. Smethurst, and Bywaters and Mrs. Thompson. It is from this point of view that the book must be judged, for, considered simply as narratives, the accounts of these trials fall between two stools. The person who is not prepared to take any mental trouble will call for something more smoothly written and more dramatic, while the person who is prepared to exercise his intellect will probably prefer the full text of the evidence, speeches and summing up, not filtered through another mind. As it is, the author takes us carefully through the hearings witness by witness, turning the evidence into *oratio obliqua*, and for the purpose he has in view

he has achieved a remarkable summary. What light, then, do these cases throw on the problem set and to what conclusion do they lead? Save in the instance of the Smethurst trial in which medical technicalities seem to have been a little beyond the twelve ordinary men, the criticisms which suggest themselves are hardly directed at the jury system. In the Bywaters case the fault, if any, lay in the judge's summing-up. In the Beck case it was the judge's view of the rules of evidence that brought about a miscarriage of justice. Similarly, in the Morrison case the jury had to work within the limitations of rules of evidence which did not seem to produce an absolutely fair result in their operation. In the case of Rouse (whose conviction was undoubtedly proper), criticism of the pre-trial publicity given to his character hardly make a case against the jury system, since the law could be adapted to curb such revelations. The late G. K. Chesterton was right when he said that the experts "do not see the awful court of judgment; they only see their own workshop." It is significant that the public confidence in juries which has had so beneficial an influence on our law has of late brought about a remarkable revival of their prestige in the civil courts.

The Juridical Review. Vol. L. No. 3. September, 1938. Edinburgh: W. Green & Son, Ltd. 5s. net.

This is a particularly interesting number of *The Juridical*, first, by reason of the excellent reproduction of the painting of the High Court of Justiciary in 1883, showing Lord Justice-Clerk Moncreiff on the bench, while below are portraits of a number of the then leading members of the Bar, the silks being noticeable in their long "folds," while the juniors, instead of bands are shown wearing white dress ties. Notices of several of those depicted are given in the accompanying letterpress. Among the other contents is an article by Mr. Roughhead on Thomas Muir, an ardent young advocate who fell a martyr to the cause of political reform; while Mr. James Ramsay writes on Boswell's first criminal case, bringing out the extraordinary behaviour of the biographer of Johnson. There are also the usual and useful comments on recent cases in Scotland and England.

Annual Survey of English Law, 1937. Royal 8vo. pp. xxxix and (with Index) 419. 1938. London: Sweet & Maxwell, Ltd. 1938. 10s. 6d. net.

This volume like its predecessors is the product in collaboration of a number of distinguished members of the London School of Economics and Political Science whose names are a sufficient guarantee of the excellence of their work, critical though it sometimes is. In the preface it is noted that Professor H. Lauterpacht, who for a number of years acted as assistant editor of *The Annual Survey*, has been elected to the Whewell Chair of International Law in the University of Cambridge, a worthy recognition of the excellence of his work in connection with London University and in particular of his share in the production of *The Annual Survey*. As in previous issues, the volume treats in some detail of the several branches of law which, either in the courts or in publications, during 1937 have been considered. While the decisions of the courts are easily accessible to readers, this is not the case with many of the discussions in legal literature, and consequently the synopses of these publications are of very great value. Like its predecessors, the volume is attractively got up, fully indexed, and should not be overlooked by members of the profession; it gives full measure, pressed down and running over.

Books Received.

Stephen's Commentaries on the Laws of England. Twentieth Edition, 1938. Advisory Editor, E. Roderick Dew, LL.B., Solicitor of the Supreme Court (Honours). Vol. I (The Courts of Justice and Constitutional and Administrative Law). Demy 8vo. pp. xv and 615 (Index, 57). London: Butterworth & Co. (Publishers), Ltd. 32s. 6d. net.

Complete Practical Income Tax. By A. G. McBain, Chartered Accountant. Tenth Edition, 1938. Demy 8vo. pp. xxiv and 336. London: Gee & Co. (Publishers), Ltd. 7s. 6d. net.

Easements of Light. A Synopsis of Modern Practice. By John Swarbrick, F.R.I.B.A. 1938. Royal 8vo. pp. ix and 75. London: B. T. Batsford, Ltd. Manchester: The Wykeham Press. Price 10s.

The Evidence Act, 1938. By Roland Burrows, K.C., Recorder of Cambridge, and C. M. Cahn, B.A., of the Inner Temple, Barrister-at-Law. 1938. Demy 8vo. pp. (with Index) 55. London: Sweet & Maxwell, Ltd. 3s. 6d. net.

Chronological Table and Index of the Statutes. Covering the Legislation to the 31st December, 1937. Fifty-third Edition. 1938. In two volumes. Royal 8vo. Vol. I, pp. x and 762. Vol. II, pp. iv and 2107. London: H.M. Stationery Office. Price for the two volumes, £1 5s. net.

Parliamentary News.

Questions to Ministers.

WAR RISKS INSURANCE.

Mr. Hall Caine (by private notice) asked the Chancellor of the Exchequer whether in view of the serious international situation and the possibility of an outbreak of hostilities he will forthwith introduce a compulsory scheme of insurance to insure the homes and property of the people of this country.

The Chancellor of the Exchequer (Sir John Simon): As already stated to the House, the Government after full investigation reached the conclusion that war risks to property on land in this country are not an appropriate subject for insurance, that is, for the payment of graduated premiums on the one hand and an undertaking to compensate in full on the other. They have, however, under active consideration a plan for eventual compensation to the limits and under the qualifications which might be laid down when the actual extent of the damage was known, and I hope that it may be possible to make an announcement regarding it very shortly.

Mr. Kirkwood: As I put the same question to the Chancellor of the Exchequer when this matter was raised before, may I ask, does that reply mean that, not only property but the lives and limbs of those who happen to be destroyed or maimed as a result of bombing and other measures, will be included in this compensation?

Sir J. Simon: Of course that is a separate question, but it is at least as important, and it has not been put behind the question on which I have answered.

Mr. Radford: Will it not be possible to take out life insurance on the ordinary lines which will include any risks which may supervene? [28th September.

RE-OPENING OF THE LAW COURTS.

Service at Westminster Abbey, Wednesday, 12th October.

On the occasion of the re-opening of the Law Courts a Special Service, at 11.45 a.m., will be held in Westminster Abbey, at which the Lord Chancellor and His Majesty's Judges will attend.

Barristers attending the service must wear robes. All should be at the Jerusalem Chamber, Westminster Abbey (Dean's Yard Entrance), where robing accommodation will be provided, not later than 11.30 a.m.

The South Transept is reserved for friends of Members of the Bar, and a limited number of tickets of admission are issued; two of these tickets will be issued to each Member of the Bar whose application is received by the Secretary of the General Council of the Bar, 5, Stone Buildings, Lincoln's Inn, W.C.2, not later than Monday, 10th October.

No tickets are required for admission to the North Transept, which is open to the public.

THE LAW SOCIETY AT MANCHESTER.

ANNUAL PROVINCIAL MEETING.

[By our Special Representative.]

The Law Society held its 54th provincial meeting at Manchester from Monday, the 26th, to Thursday, the 29th September, as the guests of the Manchester Law Society. On Monday evening the Lord Mayor and Corporation invited the President, Council and Members of The Law Society, and ladies accompanying them, to a reception in the Town Hall. The guests were received by the Lord Mayor, Alderman Sir William Kay, and the Lady Mayoress, Miss Florence M. Grime.

On Tuesday morning members assembled in the Lord Mayor's Parlour in the Town Hall, where the business of the meeting was conducted, and were welcomed to the city by the Lord Mayor. He was particularly glad, he said, at the remarkable coincidence of the visit of The Law Society with the centenary celebration of the city. He hoped that the conference would unite the Society more than ever in the unity which was the only way to succeed. He only wished that this were the outlook on international affairs. Nevertheless he was quite confident that common sense would prevail at the finish and that members would be able to disperse and go to their homes feeling that their visit to Manchester had helped in no little way to bring about many friendships and better understanding of one another. Manchester was very happy to see them and to give them a hearty welcome.

The President, Mr. William Waymouth Gibson, thanking the Lord Mayor and Corporation for their welcome, said that from the experience The Law Society had already had of the city's hospitality he was sure that they could look forward, so far as the efforts of the Corporation were concerned, to a very successful visit. Other factors were beyond their control and that of the Society. Nevertheless, they were extremely indebted to the city for its hospitality of the evening before, and for the general arrangements which had been made for the comfort of members.

The President delivered his inaugural address (reported in full at p. 784). He expressed regret at the retirement from the Council of Sir Richard Pinsent, after a membership of thirty-two years, and congratulated Sir Francis Smith, the retiring President, on his knighthood. He said that Sir Edmund Cook, the Secretary, had unfortunately not been fully restored to health and the Council reluctantly realised that he would have to resign his office next July. In the meantime his advice and knowledge would be available for the Council and its committees. Mr. Gibson touched on the new Administration of Justice (Miscellaneous Provisions) Act, the Evidence Act and the Coal Act, all of which affect lawyers in some way or another. He dealt also with the offering of so-called free conveyances, the establishment of minimum scales, collateral security on building society mortgages, and law reform.

The remainder of Tuesday morning was occupied, in accordance with the procedure commenced last year, with a private discussion of the work of the Council. After lunch Mr. G. F. Littler (Manchester) introduced a paper on "The Objects and Scope of the Hire Purchase Act, 1938." He pointed out that the Act, in adjusting the inequality of the bargaining power of the parties, followed such well-established precedents as the rules of equity concerning foreclosure and the provisions of the Moneylenders Acts and the Industrial Insurance Acts. He suggested the modifications which he considered necessary in the forms now used, and declared that the Act was a good one. He thought it a pity that the court's powers should depend so much on the judge's discretion, but found it difficult to think of a satisfactory alternative.

Not long ago the Rule Committee decreed that actions in which there is a claim for possession of freehold or leasehold property forming a security for the payment of any principal or interest must be brought in the Chancery Division. Such actions had previously been brought in the King's Bench Division, almost invariably by a specially endorsed writ under Ord. XIV. Mr. J. B. Leaver (London) contributed a study of the effect of these new rules on the right of mortgagees to possession of mortgaged property. He could not agree that the transfer of these actions to the Chancery Division had been a success, and hoped that the procedure would be accelerated to make it comparable with the previous procedure.

The banquet was held at the Midland Hotel, and a report of the speeches is printed at p. 798 of this issue.

On Wednesday morning Mr. Geoffrey C. Bosanquet (London), opened a discussion on the Inheritance (Family Provision) Act, 1938, and generally on restrictions on testamentary disposition. He showed that the Act is no novelty, for as long ago as the twelfth century the widow or children of a deceased testator could obtain a writ claiming to have allotted to them a reasonable part of the estate. At first this was a common law writ, but the custom grew up in several places of allowing free disposal of estates by will; this custom became general and the right of the widow and children was itself degraded to a local customary one, and was later extinguished by various statutes. The new Act provides a right not only to the family but also to dependants, and is in many other ways different from the old law. Mr. Bosanquet, while admitting that it did not go as far as some would wish, regarded it as a wise move.

Mr. F. G. Jackson (Leeds) explained the latest development in the long and tangled history of rent restriction: the Rent Act, 1938. Five years ago at Oxford, in a paper on the 1933 Act, he expressed the doubt, in spite of the wording of that Act, whether it would really cease to operate this year; he has been a true prophet. The new Act weights the scales of justice still further against the property-owner. Mr. Jackson summarised its chief provisions most lucidly and showed their relation to the present law.

Mr. J. E. Allen-Jones (Manchester) introduced the last discussion, on legal aid for the poor. On paper, he agreed, all is well for the poor person accused of a crime. In practice the legal provisions are little used, and he finds that justices, though well aware of the value of legal aid, are disinclined to grant it to prisoners appearing before themselves. Assistance under the Poor Persons Procedure is much more effective and further reaching. The Poor Man's Lawyer Association is doing excellent work in London and twelve other large towns, but not expanding, and Mr. Allen-Jones pleaded for its extension, in view of the great demand for its services which exists where they are provided. He explained the system of legal aid used in Sweden and advocated the establishment of State bureaux in a few important centres as a beginning.

The following members of the Council were present: Mr. W. W. Gibson (Newcastle-upon-Tyne), President, Mr. R. F. W. Holme (London), Vice-President, Mr. R. Armstrong (Leeds), Mr. W. A. Coleman (Leamington Spa), Mr. W. C. Crocker (London), Mr. F. J. F. Curtis (Leeds), Mr. E. Davies (London), Mr. W. Davies (Llanelly), Mr. B. H. Drake (London), Mr. D. T. Garrett (London), Mr. L. S. Holmes (Liverpool), Mr. F. H. Jessop (Aberystwyth), Mr. P. R. Longmore (Hertford), Mr. W. E. M. Mainprice (Manchester), Lt.-Col. S. T. Maynard (Brighton), Sir Charles Morton (Liverpool), Mr. W. R. Mowll (Dover), Mr. W. C. Norton (London), Mr. F. A. Padmore (Manchester), Mr. A. F. I. Pickford (London), Sir Reginald Poole (London), Sir Harry Pritchard (London), Mr. H. N. Smart (London), Sir Francis Smith (London), Col. W. M. Smith (Sheffield), Mr. F. Webster (London), Mr. I. D. Yeaman (Cheltenham), and Sir Edmund Cook, Secretary.

Entertainments.

Members found a lavish programme of entertainments awaiting them at Manchester. On Tuesday afternoon, after the business of the meeting, they were invited to attend an exhibition racquets match at the Salford premises of the Manchester Tennis and Racquet Club. A party were shown over the John Rylands Library, a recent but famous institution. Its contents comprise 400,000 printed books, including the Spencer Althorp Collection, which is said to have been the finest private library ever brought together; also unique collections of block books, incunabula and other rarities. The manuscripts illustrate the history of writing and illumination in the principal eastern and western languages from 4,000 B.C. to the present day. Another party saw Chetham's Hospital and Library, which was established by a merchant in 1653 in a beautiful building then more than 200 years old.

The hospital is a boarding school for ninety boys of the city and district, and the library, one essentially for scholars, is well provided with classical, historical and philosophical works. The section relating to local history includes many originally private collections of manuscripts. The ancient college buildings are a wonderful example of mediæval work.

At the same time as the banquet was being held, the ladies were entertained by the Manchester Society to a reception in the same hotel.

On Wednesday afternoon a number of members went in motor coaches to the Ringway Airport. They inspected the works of the Fairey Aviation Company, and then took tea with the Airport Committee of the Corporation. This is the second airport the city has opened, and it can accommodate the largest and fastest types of machines. It is being equipped for use at night and in bad weather, and by the late autumn it is to have a complete night-lighting system which will provide a fog-line over 1,300 yards long. Large service buildings have already been erected. Those members who wished were taken up for short flights and a number took advantage of the opportunity.

A party were driven out by the new Princess Parkway to see the Wythenshawe Housing Estate, which is nearly 4,000 acres in extent and is being developed as a daughter town, both by the Corporation and by private enterprise. A belt of agricultural land is to be reserved round the estate and to be used largely for intensive cultivation to supply the town. Three parkways—main roads with belts of parkland on each side—are being constructed, and the Princess Parkway is nearly complete. Many woods and spinneys are reserved as private open spaces throughout the estate. The plan provides for a civic centre with schools, libraries, baths and municipal buildings. Definite shopping centres are laid out in various parts.

Those who preferred not to go so far afield had an opportunity of seeing Allied House, the Manchester headquarters of Allied Newspapers, Ltd. It is said to be the greatest newspaper office in Europe, and produces over 10,000,000 copies a week. Every week-end it prints and sends out complete editions of five daily and two Sunday newspapers. Members saw the whole of the premises, and that day's edition of the *Manchester Evening Chronicle* going through its various stages. A fourth party was shown over the Haworth Cotton Mills in Salford, and given tea afterwards at the Peel Park Museum and Art Gallery by the Mayor and Mayoress of Salford, Councillor and Mrs. Arthur Millwood. In the evening the University of Manchester held a reception and dance, during which the Chancellor, the Earl of Crawford, conferred the degree of LL.D. *honoris causa* upon Sir Edmund Cook, secretary of The Law Society, and Mr. F. A. Padmore, president of the Manchester Law Society.

There was also a choice of several excursions on Thursday. One party went in motor coaches to the terminal docks of the Manchester Ship Canal and were taken down the canal in a tender to Runcorn, where they were given lunch. They continued their journey down to the Liverpool end in the afternoon, and returned by road. The canal is 35½ miles long and includes quays and docking systems over a large part of its length. It incorporates several rivers, and its level is maintained by four systems of locks. It is crossed by many road and railway bridges, but the most famous and remarkable bridge over it is the swing aqueduct at Barton, which carries the Bridgewater Canal. The swinging section weighs 1,450 tons when it is full of water. All bridges are a clear 70 feet above the surface of the canal.

Another excursion party went through Bolton, and then by way of contrast over the moors to Preston, and then on through agricultural country to Lancaster. There the visitors saw the castle and had lunch, and afterwards the motor coaches took them on through the high ground of the Pennines to the Trough of Bowland, a pass two miles long through the Fells of Bowland Forest, on the Yorkshire border. The party stopped for tea at the Moorcock Inn, nearly 1,200 feet about sea-level on Waddington Fell. The homeward route led through Clitheroe, with its Norman castle, and Whalley, with its ruined abbey.

A third party went out to the Wythenshawe Estate and past the Ringway Airport into Cheshire, where they passed through historic villages such as Knutsford and Great Budworth. At Chester the visitors were the guests of the Chester and North Wales Incorporated Law Society, members of whom showed them the cathedral and entertained them to lunch, where the Mayor of Chester, Alderman George Barlow, offered them a civic welcome. After lunch the party divided according to choice and saw the Roman Walls and the ancient and modern sights of the town.

In the evening members attended a performance of "The Burgomaster of Stilemonde" at the Prince's Theatre, given by Sir John Martin Harvey and his company. A number of golfing members took part in the competitions of the Manchester Lawyers' Golfing Society at their autumn meeting on Friday.

The President's Address.

Mr. W. W. Gibson, B.A., LL.M., the President, delivered the following address:—

I.—Preliminary.

The past year has been marked, amongst other events, by the retirement from the Council of Sir R. A. Pinsent, Bart., the bestowal of a Knighthood on my predecessor, Sir Francis Smith, a breakdown in the health of the Society's Secretary, Sir E. R. Cook, and the retirement of its Assistant Secretary, Mr. H. E. Jones.

Sir Richard Pinsent was the Nestor of the Council, and during his membership of thirty-two years he rendered service of inestimable value to it and to the profession. His colleagues parted from him with deep regret and will long miss his wide knowledge, ripe experience, wisdom, balanced judgment and unfailing courtesy and kindliness.

The interests of the Society were safeguarded with zeal and dignity by Sir Francis Smith during his term of office as President, and the honour which His Majesty conferred upon him was regarded as a well deserved tribute to the work done by him for his professional brethren during that period and many preceding years.

Sir Edmund Cook was unwell when he went to the Provincial Meeting at Exeter a year ago, and after it he became ill. His recovery was incomplete and in January last the Council sent him to South Africa. He returned in April last and, although not fully restored to health, he resumed work. For five weeks he struggled on and was then ordered rest and a change of scene. They did not entirely rid him of the insomnia from which he had been suffering, and the Council very reluctantly realised that his years of devoted and strenuous labour for the Society and the profession had told so heavily on him that it would be necessary for him in the near future to resign his office.

Arrangements have therefore been made by which Sir Edmund will retire next July, when he will have been Secretary for a quarter of a century, and in the interval, although he will be relieved of the burden of work and responsibility, his advice and the benefit of his experience and unique knowledge of the affairs of the Society will be available for the Council and its Committees.

I expect to have the opportunity at the Annual General Meeting in July, 1939, of attempting to pay an adequate tribute to Sir Edmund's services. I will end my reference to him here by assuring him that the Society is delighted that he is to receive from the University of Manchester the degree of LL.D. *honoris causâ*.

Mr. Jones, who came to the Society in 1913, was made Assistant Secretary in July, 1914, and has been Clerk to the Disciplinary Committee since July, 1926. In both capacities he did excellent work, and it is a misfortune for the Society that his retirement, of which he gave notice last autumn, should have coincided with the cessation of Sir Edmund Cook's active labours. The Council wish Mr. Jones many years of health and happiness.

Mr. T. G. Lund, who was appointed Joint Assistant Secretary in November, 1937, and has now become Assistant Secretary, has discharged the burden of extra work thrown upon him in the past year to the complete satisfaction of the Council.

The University of Manchester has resolved to confer the degree of LL.D. *honoris causâ* on Mr. Padmore, who has worthily represented Manchester on the Council as an extraordinary member since 1928 and has displayed great interest in legal education both as a member of the Legal Education Committee and in Manchester. Mr. Padmore is this year for the second time the President of the Manchester Law Society. We congratulate him heartily on both these honours and that Society on having attained its centenary.

I now pass from persons to things.

II.—Legislation.

The Administration of Justice (Miscellaneous Provisions) Act, the Evidence Act and the Coal Act all contain provisions affecting lawyers.

(A) *The Administration of Justice (Miscellaneous Provisions) Act.*

This Act provides (*inter alia*) for (1) the appointment of legally qualified chairmen and deputy chairmen of Quarter Sessions, (2) the extension of the jurisdiction of Quarter Sessions and other matters relating to those Sessions, (3) amendment of the power to cancel Assizes and amendments as to committal to Assizes or Quarter Sessions.

(4) amendments as to proceedings on the Crown side of the King's Bench Division, and (5) extension of the jurisdiction of County Courts and their Registrars.

The persons eligible for appointment as legally qualified chairmen and deputy chairmen of Quarter Sessions are persons who are or have been barristers or solicitors of not less than ten years' standing, having such legal experience as to qualify them in the opinion of the Lord Chancellor to act as chairmen or deputy chairmen of Quarter Sessions. Appointments are to be made by His Majesty on application by Quarter Sessions and after recommendation by the Lord Chancellor.

As to County Courts, their jurisdiction in actions of contract or tort or for money recoverable by statute has been increased from £100 to £200 instead of to £300, the figure in the Bill as introduced and that advocated by the Council, subject to the right of the defendant, where the amount claimed exceeds £100 but does not exceed £200, to have the action transferred to the High Court, and power has been conferred on the Rule Committee to make a rule authorising the Registrar to hear and determine proceedings other than actions, and any actions in which the defendant fails to appear at the hearing or admits the claim, and, on the application of the parties and by leave of the Judge, any actions in which the sum claimed or the amount involved does not exceed £10, instead of £20, the figure in the Bill as introduced and that advocated by the Council.

When a suitable opportunity occurs, representations will be made for the increase of the figures of £200 and £10.

(B) *Evidence Act.*

This Act, of which the author was Lord Maugham, contains provisions for admission of documentary evidence as to facts in issue in any civil proceedings where direct oral evidence of those facts would be admissible, as to the weight to be attached to statements rendered admissible as evidence by the Act, as to proof of instruments for the validity of which attestation is necessary and as to presumptions in cases of documents proved or purporting to be not less than twenty years old.

The Act came into operation on 1st September. It is expected that it will shorten the hearing of actions, but it will probably be some time before it will be possible to decide whether it has fulfilled that expectation or not, and in some quarters doubts are entertained as to the wisdom and practicability of its main provisions.

(C) *The Coal Act.*

A feature of this Act of peculiar interest to conveyancers is the highly ingenious use made of an assumed contract and conveyance in connection with the future transfer, by virtue of the Act, of coal royalties to the Coal Commission.

It may also be remarked that although solicitors who have acted for royalty owners will lose work in consequence of the transfer, yet for about four years they will have a certain amount of work to do in connection with proof of ownership of coal and valuation of their clients' royalties.

III.—Defalcations by Solicitors.

This topic was exhaustively reviewed by my predecessor at the Annual General Meeting on the 8th July last, and directly afterwards a communication was sent to every practising solicitor stating the decisions of the Council. Since then, Counsel has been instructed to draft a Bill to deal with the matters requiring legislation and a joint committee of representatives of the Finance Committee and representatives of the Professional Purposes Committee has been set up to consider questions arising on the formation of legal and accountancy departments by the Society, and this joint committee will meet after the vacation.

Steps have been taken to secure the circulation to all Provincial Law Societies of lists of persons proposing to enter into articles of clerkship, and, if and when statutory authority has been obtained, lists of solicitors proposing to take articled clerks will also be circulated to those societies.

IV.—Conditions of Sale offering Free Conveyances.

The practice of offering so-called free conveyances has caused much heart-burning in the profession and trouble to the Council. It leads to under-cutting and tends to deprive solicitors of work from clients to whom the offer of a free conveyance is made and to concentrate that work in the hands of the solicitors for the landowner and the builder.

The practice has also become little short of a public evil. Purchasers believe, as they are intended to, that the vendors are paying their legal charges for them or that they have none to pay, and they do not realise that a sum for their legal charges is included in the price. This is hardly honest trading, and it is a system to which some of our alert and public-spirited legislators might well devote attention.

It will be remembered that on the 22nd May, 1936, the Council adopted a report of the Scale Committee on this subject and that soon afterwards a statement of the effect of this report was published in the "Gazette," and that at a special general meeting of the Associated Provincial Law Societies on the 9th July, 1937, a resolution was unanimously carried requesting the Council to revise the report by adding to the principles there laid down, to which in their opinion all conditions and contracts should conform, certain points specified in the resolution.

This resolution has been undergoing careful and sympathetic consideration by the Scale Committee, which prepared a supplementary report, and also by the Professional Purposes Committee, and a special committee consisting of representatives of both committees was subsequently appointed to consider the subject. This special committee has decided that it cannot usefully proceed until the sub-committee of the Professional Purposes Committee appointed to deal with the question of minimum scales has hit upon some definite conclusion that has proved acceptable to the Council.

V.—Minimum Scales.

At the Provincial Meeting at Exeter a year ago resolutions were passed:—

(A) That the Council be recommended urgently to take into consideration the desirability of establishing a general minimum scale;

(B) That the Council be invited to consider the formulation of a practice rule to the effect that breach of a rule or scale laid down by a Provincial Law Society shall be *prima facie* evidence of professional misconduct.

On the 22nd October, 1937, the Council referred these resolutions to a Sub-Committee of the Professional Purposes Committee for consideration. The Council also referred to this Sub-Committee the following resolutions passed at a meeting of the Associated Provincial Law Societies held on the 10th December, 1937:—

"That it is desirable—

"1. To encourage the setting up of local prevailing scales whereby solicitors in a locality agree that they will not do work under an agreed rate for any person.

"2. To standardise as far as possible such local scales both as to amount and conditions.

"3. To avoid any overlapping of districts.

"4. To agree upon the method of defining areas, such as County, Urban or Rural districts, City or Borough Boundary."

On the 8th April, 1938, the Sub-Committee presented a report and a minority report to the Council which decided to forward copies of them to the Master of the Rolls for his informal opinion as to whether there is power to make rules in either of the forms suggested in the reports and whether in principle he would be prepared to approve rules in such form as was recommended in one or other of the reports, and the Council also decided that, when the Master of the Rolls had expressed his views, both the reports should be reconsidered by the Committee and, if necessary, combined in one report to be submitted to the Council again.

An interview with the Master of the Rolls took place on the 2nd May, 1938, and on the 27th of that month the Council considered an interim report from the Committee, and resolved that it is desirable to enforce minimum scales of charges laid down by the Provincial Law Societies, provided proper safeguards are included in the rules, and that the matter be referred back to the Professional Purposes Committee for further consideration and report.

The Sub-Committee has had several further meetings and conferences, and is having prepared amendments to the draft rules which had been drawn at an earlier stage. The draft rules embodying these amendments will be considered by the Sub-Committee after the vacation.

The drafting of the rules as to and exceptions from minimum scales is a matter of the greatest difficulty and during the year the Council and its Committees have considered it on about thirty occasions.

VI.—Building Societies: Collateral Security on Personal Estate.

In recent years it has become increasingly common for Building Societies to take as collateral security for mortgages on real or leasehold estate mortgages or charges on personal estate other than leasehold. From my experience of this class of collateral security which is met with in varying forms, it would seem that a word of warning about it will not be out of place.

By s. 13 of the Building Societies Act, 1874, the object of Building Societies is defined as being to raise by the subscriptions of the members a stock or fund for making advances

to members out of the funds of the Society upon freehold, copyhold or leasehold estate by way of mortgage.

The leading case on the subject is *Sheffield and South Yorkshire Building Society* v. *Aizelwood* (1890), 44 Ch. D. 412. It was there suggested that any security over personal estate taken by a Building Society collateral to a mortgage of freehold or leasehold property to it is invalid, and that if it were taken the mortgage would be vitiated, but that view was rejected. Mr. Justice Stirling said that if the circumstances of a borrower were such that his personal covenant was without value, the Building Society might take a personal guarantee from a third party or a charge on some readily available pure personal estate.

The benefit so obtained must, however, be purely collateral, and the validity or propriety of the transaction was to be tested as if no such ingredient entered into it. If there were no freehold or leasehold estate comprised in the security or if the estate so comprised were merely nominal or its value out of all proportion to the amount advanced, the transaction was beyond the powers of the Society and invalid, but where the borrower offered as security such estate to a substantial extent, an advance was within the powers conferred by the Act of 1874 and the Society must determine what amount may be properly advanced and that they must decide having regard solely to the nature and value of the freehold, copyhold or leasehold estate offered to them and without reference to the solvency of the borrower or the worth of any personal estate he may be willing to throw in by way of security.

A collateral security in which it was recited that the normal amount the Society would advance on the property which was valued at £520 was, say, £180, and that in consideration of it advancing an extra £20 the borrower or some one at his request gave the Society a charge on preference shares of the Society or other personal estate, would, I submit, be invalid. I believe that many of the forms of collateral security on personal estate which are in common use are invalid and must have been prepared in ignorance of the legal position or under a misapprehension of the law.

There is, I understand, a possibility of a case coming before the Court at an early date in which a ruling on the matter may be given. The principles enunciated by Mr. Justice Stirling in the case cited will no doubt then come under review.

VII.—Law Reform.

Although it may savour of indulging in the pleasant pastime of tilting at windmills, I propose to suggest some changes in the law or in its administration which seem to me to be desirable.

(A) *The Doctrine of Common Employment.*

It is time that this artificial rule of law, which is based on a legal fiction palpably false in modern industry, was abolished.

(B) *Payment by Husbands of Wives' Costs of Marriage Settlements.*

This hoary relic of the past, dating from the days when a woman's property vested in her husband on their marriage, is a custom that has the force of law but has only its antiquity to recommend it.

This too should be abolished.

(C) *Law of Licensing.*

Tectotal fanatics should, like shareholders in brewery companies, be ineligible to sit as licensing justices.

The requirement that licences granted in cities and county boroughs by the licensing justices at Brewster Sessions must come up before the full bench of magistrates for confirmation is bad and leads to the scandal of magistrates, who seldom or never appear on the bench, making a point of turning up in force at the confirmatory meeting where there is little doubt that most of these whipped up justices vote against confirmation.

(D) *Quarter Sessions. Recovery of Costs.*

It is an anomaly that Courts of Quarter Sessions have no powers as to recovery of costs and that a successful appellant or respondent who has been awarded costs against a respondent or an appellant must sue in the County Court or the High Court for the costs, instead of being able to issue execution.

(E) *Reform of the Courts.*

(I) The Judicial Committee of the Privy Council should be the final Court of Appeal for the Empire beyond the Seas, Northern Ireland and Scotland.

(II) The House of Lords should be deprived of its functions as a court of law.

(III) The Court of Appeal should be reconstituted in at least four divisions of three judges each and should form the final Appeal Court for all civil and criminal appeals from England and Wales.

The somewhat unexpected announcement a few weeks ago of the constitution of a third Court of Appeal is a welcome step, but it does not go far enough.

(IV) The King's Bench Division.—All Divisional Courts should be abolished, Admiralty business should be transferred to it from the Probate, Divorce and Admiralty Division and be linked with the Commercial Court.

No reform of the courts will be satisfactory unless it does away with the present delays and arrears in the King's Bench Division, and one essential is that the number of Judges of that Division should be further increased so as to ensure all cases in London and at Assizes being dealt with without delay and without recourse to the appointment of Commissioners of Assize. At least one spare judge should always be available in case of illness or special pressure of work either in London or at Assizes.

The extra cost involved would be counterbalanced by greater expedition in disposing of the lists, and it is possible that with fewer delays in future the number of cases might increase.

(V) Probate work should be transferred from the Probate, Divorce and Admiralty Division to the Chancery Division.

(VI) The Probate, Divorce and Admiralty Division should retain only matrimonial causes and should be called the Divorce Division.

(VII) The County Courts should be reconstituted as district courts of the High Court.

The jurisdiction of the County Courts in contract and tort and as to money recoverable under statute should be increased to £300.

The jurisdiction of County Court Registrars in small debt cases should be increased to £20, subject to a right of appeal to the judge on a point of law.

(VIII) Circuit System.—Assizes should be held quarterly as a general rule, with power as now for an Assize to be cancelled if there are no cases.

King's Bench Judges should go on Assize for at least three months continuously.

Only Judges should hold Assizes. The frequent appointment of Commissioners of Assize indicates that the number of Judges of the King's Bench Division has been inadequate. There has never been any reserve for illness. The interests of justice demand a further increase in the judicial strength of this Division. It must be such as will not only ensure an adequate supply of Judges to go on Circuit but will also be ample to carry on the work in London without the delays and arrears which have been and are so detrimental to the public and to a lesser extent to the legal profession.

Understaffing in business is unsound. The Law Courts exist to carry on the business of administering justice. That is one of the highest duties of the State. Under-manning of the judiciary is therefore not only unsound but anti-social.

The proposal which finds favour in some quarters that what is needed in the King's Bench Division is a business manager, is, in my belief, misguided, and would if adopted do far more harm than good.

VIII.—Provincial Representation on the Council.

The system of representation of Provincial Members on the Council was adopted many years ago and in the interval circumstances have altered. The scheme has recently been criticised adversely. Proposals for its amendment would naturally come from the Associated Provincial Law Societies and that body has not submitted any such proposals to the Council. As the Council has so many important and difficult matters on hand this year I trust that that body will not until later impose on them the burden of dealing with this subject.

IX.—Our Profession.

"'The best editions of the best authors.' These are my tools of trade. A lawyer without history or literature is a mechanic, a mere working mason; if he possesses some knowledge of these he may venture to call himself an architect."

In "Guy Mannering" these words are put into the mouth of Colonel Mannering by Sir Walter Scott, whose fame as a novelist has somewhat overshadowed his reputation as a lawyer.

"The essential difference between a profession and a trade is that a man may embark in trade to see what he can get out of it, but the spirit that calls a man to a profession should be the desire to contribute something to its tradition and achievement and to leave behind him not a fortune but a memory."

This passage is taken from "Practice at the Irish Bar," by Mr. Sergeant Sullivan, K.C.

The two quotations set before us a high ideal. The learned Sergeant indeed might be taken to mean that a man ought

not to enter a profession merely for the sake of earning his living. But that is in these days the reason why most solicitors have become lawyers. I hold that a solicitor may rightly make earning his daily bread his object, but that he should strive to uphold the honour and the dignity of a great profession and should regard it as better to leave behind him the memory of a well-spent life than much fine gold. Money may be a necessary evil, but it is not everything.

I would also put in a plea for the study of the history and antiquities of our law. In my judgment no one can be considered a finished lawyer, hardly even an educated man, unless he has acquired a competent knowledge of the origins and development of our legal system. In other words a solicitor should be a scholar.

A vote of thanks to the President for his address was proposed by Mr. F. A. PADMORE, President of the Manchester Law Society, seconded by Mr. G. E. CASTLE, President of the Liverpool Law Society, and carried unanimously.

Mr. G. F. LITTLER (Manchester) read the following paper:—

THE OBJECTS AND SCOPE OF THE HIRE-PURCHASE ACT, 1938.

The new Hire-Purchase Act which has just received the Royal Assent was, as most people know, introduced late last year into the House of Commons by Miss Ellen Wilkinson as a Private Member's Bill. It was originally considered by a committee which included social workers such as Dr. J. J. Mallon, the Warden of Toynbee Hall, Mr. Watkins, a London Solicitor, and Sir Harold Bellman, the Building Society authority, and was approved in its draft form by the Hire Purchase Traders Association. It is designed to mitigate several abuses which have crept into the system of hire-purchase trading in this country.

Although hire-purchase trading is still regarded with suspicion by many people, and although it does in fact lend itself to abuse by over-keen salesmen or over-optimistic buyers, it is clear that the system is of the greatest importance in the modern commercial life of this country. More recent even in its development than another great system by means of which property is sold on credit, the lending of money by Building Societies, hire-purchase trading has grown since the war to an astonishing extent. Exact figures are unobtainable, but the Hire Purchase Traders Association estimate that every year no fewer than *four million* hire-purchase agreements are entered into and that 50 per cent. of all sales of motor cars, furniture and wireless sets and 10 per cent. of jewellery sales are now effected by means of this system. In addition, of course, very wide use of hire-purchase agreements is made in connection with the sale of agricultural livestock and implements, bicycles and various types of machinery.

As sales on the hire-purchase system are generally to people of limited means, it is perhaps inevitable that in a proportion of cases difficulty should arise because purchasers have miscalculated their means or over-zealous salesmen have effected sales of articles—particularly household articles—to people who are not really in a position to pay for them. From the trader's point of view there is serious risk of loss in transactions of this nature as, however desirable it may be for him to do so, it is almost impossible in practice for him to be sure in every case that the purchasers of his goods can really afford them. This risk naturally increases if the trader, perhaps in his search for new markets, allows his methods to become at all lax. Naturally in these circumstances lawyers have been asked in preparing forms of hire-purchase agreements to protect the seller's interests, and they have now succeeded in evolving forms of hire-purchase agreement in which there is displayed a high degree of ingenuity and skill in attaining this object. Under a very large number of such agreements the seller is one of the firms which exist to finance the sales on hire-purchase of small traders, and it is not therefore surprising to find that the modern form of hire-purchase agreement is also designed to reduce the liabilities of the seller (e.g., for any defects in the goods sold) to a minimum.

Hitherto this process has been assisted because the law has allowed virtually complete freedom to all parties to agree to such terms in relation to a hire-purchase transaction as they may think suitable. For some years, however, it has been increasingly obvious that the average purchaser on the hire-purchase system is not by any means in as favourable a position as the seller to drive a fair bargain. The difference is that the seller has the money required to finance the sale and the buyer has not. In the result the buyer in the majority of cases submits, as a matter of course, to signing the agreement which is placed before him without any criticism, perhaps without even reading it, and the seller has everything in his favour that the skill of his advisers can procure for him.

The new Act is based on a recognition of, and seeks to adjust, this inequality in the bargaining power of the parties to a hire-purchase transaction. In doing so the Act follows well-established precedents. It is many years since courts of equity began to grant relief to borrowers of money on mortgage against the hardship brought about by a literal enforcement of the terms of redemption under the mortgage deed, while in more recent times provisions such as those found in the Moneylenders Acts and the Industrial Assurance Acts are obviously designed to secure people of small means or otherwise hampered by lack of money from entering into foolish or oppressive bargains. In Scotland the law with regard to hire-purchase transactions, of which the value does not exceed £20, has already (since 1932) been regulated by statute.

Let us turn now to the actual provisions of the new Act which is to come into operation on 1st January, 1939.

Under s. 1 hire-purchase agreements and credit sale agreements (the latter being defined to mean an agreement for the sale of goods under which the purchase price is payable by five or more instalments) are placed on the same footing, but the Act is to apply to them only if the hire-purchase price or total purchase price does not exceed (*a*) in the case of livestock £500; (*b*) in the case of a motor vehicle (including accessories) or railway wagon or other railway rolling stock, £50; and (*c*) in any other case, £100.

It would appear from these figures that the greater part of sales of motor vehicles and machinery will not be affected by the new Act; nevertheless the Act will apply to many sales of second-hand motor vehicles and probably to most sales of furniture and household effects.

Section 2 secures some useful safeguards for a buyer on the hire-purchase system. It provides that he must be told the price of the goods for cash and must sign and be supplied with a copy of the hire-purchase agreement. The cash price is to be stated to the buyer in writing before the agreement is signed, but, where the buyer inspects the goods or like goods, the attachment of a ticket or label showing the cash price, where the buyer selects the goods from a catalogue, price list or advertisement, a clear statement therein of the cash price, will be sufficient to comply with the section. There must also be a note or memorandum of the agreement signed by the hirer and by or on behalf of all other parties thereto. From this it would appear that signature by an agent of the hirer is not permissible. The note or memorandum must contain (*a*) a statement of the hire-purchase price and of the cash price of the goods; (*b*) particulars of the amounts and the due dates or mode of ascertaining the due dates for payment of the instalments; (*c*) a list of the goods sufficient to identify them; and (*d*) a notice in the terms set out in the Schedule to the Act. This notice must be at least as prominent as the rest of the contents of the note or memorandum, and it may be summarised by saying that it informs the purchaser of his right to terminate the agreement and of the restriction on the owner's right to recover the goods after one-third of the purchase price has been paid which appears later in the Act.

Failure to comply with this section prevents the trader from enforcing the agreement or any right to recover the goods or any contract to guarantee the liabilities under the agreement, and also prevents the enforcing of any security given by the hirer or any guarantor for due payment of the instalments. There is, however, a proviso that the Court may relieve against failure to comply with any of these requirements, other than the failure to have a note or memorandum of the agreement, if the Court considers it just and equitable so to do.

Section 3 of the Act contains similar provisions with regard to credit sale agreements, but the requirement of a note or memorandum does not apply unless the total purchase price exceeds £5.

The experience gained from the working of the provisions in the Moneylenders Acts with regard to borrowers being furnished with copies of their agreements, etc., will no doubt be useful in administering these sections.

Section 4 of the Act confers upon a hirer under a hire-purchase agreement an absolute right to determine the agreement on giving written notice to that effect to the person entitled to receive the instalments. If this right is exercised, the hirer must of course return the goods and he remains liable for any instalments then actually due from him, and, if he has not already done so, he must also pay half of the total purchase price, subject to his being first credited for instalments due before determination.

A smaller liability may, however, be specified in the agreement. The hirer also remains liable for damages for failure to take reasonable care of the goods, and the Act provides that, if the hirer determines the agreement under his statutory right to do so and then wrongfully retains possession of the goods after he has given notice of determination, the Court must in any action brought by the owner to recover possession of the goods from him order them to be delivered to the owner, unless it is satisfied that, having regard to the circumstances, it would not be just and equitable so to do.

Most existing hire-purchase agreements provide for payment of a minimum sum by the purchaser in the event of his determining the agreement, and this new provision is in effect a limitation on the amount so payable. As originally drafted the Act provided for payment of not less than one-third of the total purchase price, but representations by traders as to the expenses incurred by them for transport, commission, etc., and the possibility of heavy depreciation in the value of many classes of articles, led to the alteration of the proportion to one-half.

Section 5 renders void any provision in an agreement authorising an owner or any person acting on his behalf to enter upon any premises to retake possession of the goods; any restriction on the right of the hirer to determine the agreement; the imposition of any liability other than such as is imposed by the Act on the termination of the agreement, whether such termination is by the owner or the hirer; any provision constituting a person acting on behalf of the owner as the agent of the hirer; and any provision relieving an owner from liability for the acts or defaults of any person acting on his behalf in connection with the formation or conclusion of an agreement. This clause is very similar to the corresponding clause appearing in the Scottish Hire-Purchase Act.

Section 6 contains provisions enabling the hirer of goods under a hire-purchase agreement to obtain additional copies of the note or memorandum of the agreement and a detailed statement of the amount which has been paid and the amount which remains owing under the agreement. A fee of 1s. is payable for the expenses of the owner, and if the owner fails to comply with a request for such a copy or statement he may be liable to a fine and is also prevented from enforcing the agreement or any security given for payment of the instalments due under it while the default continues.

Section 7 imposes on the hirer a duty to give information as to the whereabouts of goods at the request of the owner with a provision for a fine in default.

Section 8 is likely to be of considerable importance. Hitherto hire-purchase agreements (not being contracts for sale of goods within the Sale of Goods Act) have not imposed upon the owner any statutory liability in the event of goods or the title of the purported owner being in any way defective, and in fact most hire-purchase agreements now contain a clause that no condition or warranty is implied therein as to the quality, description, fitness or otherwise of the goods. Under the new Act, however, in every hire-purchase agreement there is to be implied (whether or not there is an agreement to the contrary)—

(A) A warranty that the hirer shall have and enjoy quiet possession of the goods;

(B) A condition that the owner shall have a right to sell the goods at the time when the property is to pass;

(C) A warranty that the goods shall be free from any charge or encumbrance in favour of any third party at the time when the property is to pass; and

(D) A condition that the goods (unless they are goods let as second-hand goods and the note or memorandum of the agreement made in pursuance of s. 2 of the Act contains a statement to that effect) shall be of merchantable quality, subject however to a proviso that, if the hirer has examined the goods or a sample thereof, there shall be no implied condition as to defects which the examination ought to have revealed and that in any event no condition shall be implied as regards defects of which the owner could not be reasonably aware at the time when the agreement was made. Further, unless the hirer agrees to the contrary under a provision in the agreement which the owner must prove was brought to the notice of the hirer and made clear to him, there is an implied condition that the goods shall be reasonably fit for any purpose which the hirer has made known either expressly or by implication.

These conditions and warranties are similar to those found in the Sale of Goods Act, to which, no doubt, reference will be made in construing them. In view of the possibility of excluding the condition of reasonable fitness for a purpose made known by the hirer it is thought that in the future many hire-purchase agreements will contain an express certificate by the hirer that the provision excluding this condition has been brought to his notice and its effect made clear to him. Probably it would be advisable for the hirer to append a separate signature to a certificate of this nature in addition to his signature to the main body of the agreement. Moreover, the agreement should state that the goods are second-hand goods, if such is the case. Otherwise the condition that the goods are to be of merchantable quality cannot be excluded, but the effect of this condition is considerably limited by the proviso that it is not to apply to defects of which the owner could not reasonably have been aware at the time when the agreement was made. It will be a matter for the courts to decide whether finance companies who enter into agreements for the letting of goods are under any duty to inspect the goods or otherwise take steps to see whether the goods are defective. On the whole it is thought that the Courts would reject an argument that a finance company need not concern itself to inspect goods which it is letting, and if this is sound such companies must in future either arrange for an inspection or alternatively obtain an undertaking of indemnity from the trader whose transactions they are financing. It is thought that the latter course is more likely to be adopted.

Section 9 deals with the appropriation of payments made by a hirer who is liable to the same owner for instalments under two or more agreements. The hirer is given the right, notwithstanding any agreement to the contrary, to appropriate the payments as he thinks fit, but, if he fails to make any appropriation, the rule followed since *Clayton's Case* was decided in 1816, that the right of appropriation then passes to the creditor, is abrogated, and, instead, the payment is deemed to be appropriated towards the satisfaction of the sums due under the agreements in the proportions which those sums bear to one another.

Section 10 is to the effect that where, in an action by an owner to enforce a right to recover possession of goods from a hirer, the owner proves that before the commencement of the action and after the right to recover possession of goods accrued he made a request in writing to the hirer to surrender the goods, the hirer's possession shall for the purposes of the owner's claim be deemed to be adverse to the owner. Nothing, however, in this section is to affect a claim for damages for conversion. The point of this provision is that in many cases (e.g., *Clayton* v. *Le Roy* [1911] 2 K.B. 1031) it has been held that an action cannot be brought for detinue unless the claimant has made a request for the return of the goods and met with a refusal. For the future, however, where the action relates to goods comprised in a hire-purchase agreement, the claimant need only prove that he made a request in writing as required by the Act and the Court will not require further evidence of adverse detention.

Sections 11 and 12 contain what Miss Wilkinson, in moving the second reading of the Bill in the House of Commons, described as "the gist of the Bill." They are the sections which in certain cases restrict the owner's right to recover possession of the goods otherwise than by action and give very wide powers to the Court in an action by an owner to recover possession of goods. These sections are made to prevent what has come to be popularly known as "snatching back." As is generally known, a standard form of hire-purchase agreement provides that, if the hirer makes default in paying any of the instalments, the owner may terminate the hiring and re-take possession of the goods, and this provision is commonly supplemented by an authority for the owner or his agents to enter upon any premises where the goods may be placed and a clause exempting him from any liability for so doing. Cases of hardship arise where almost the whole of the hire-purchase price has been paid and then perhaps the hirer loses his job and gets in default and the whole of the goods are taken back. A number of very hard cases was mentioned when the Bill was under consideration in the House of Commons and, although no doubt these were extreme examples, it is clear that the evil is sufficiently great to require attention from the legislature. Mr. Leslie, in seconding the motion for the second reading of the Bill in the House of Commons, estimated that about six hundred seizures of goods for failure to keep up instalments took place daily, and Miss Wilkinson gave some description of methods employed, in particular by a Manchester firm, to intimidate householders who tried to resist the re-taking of the goods.

To deal with this position s. 11 applies where goods have been let under a hire-purchase agreement and one-third of the hire-purchase price has been paid, whether or not in pursuance of a judgment. In these circumstances the owner is not entitled to *enforce* any right to recover the goods otherwise than by action. Recovery of the goods in contravention of the section has the effect of determining the agreement and releasing the hirer and any guarantor from all further liability; moreover, the hirer and any guarantor may recover from the

owner any sums paid by them under the contracts for hiring and guarantee respectively.

Section 12 supplements these provisions. First of all it provides that an action by an owner against a hirer to recover possession of goods in respect of which one-third of the hire-purchase price has been paid is to be commenced in the County Court for the district in which the hirer resides or carries on business or resided or carried on business at the date on which he last made a payment under the hire-purchase agreement. This of course is in line with the provisions of the County Court Act, 1934, designed to prevent the hardship of debtors being sued in a Court many miles from their homes in such circumstances that they would find it a matter of great difficulty to attend the hearing. Further, the section provides that, while an action for possession is pending, the owner is not to take any step to enforce payment of any sum due under the agreement or any contract of guarantee except by claiming the sum in the action. Unless an exception is provided for by Rules of Court, all the parties to the agreement and any guarantor must be parties to the action and there is a useful power for the Court pending the hearing of the action (which in a busy Court may be a month or two after the issue of the summons) upon the application of the owner to make such Orders as it thinks just for the purpose of protecting the goods from damage or depreciation including Orders restricting or prohibiting the user of the goods or giving directions as to their custody. The power of restricting the user of the goods may be particularly useful in case of machinery of which the hirer, knowing that the goods are likely to be shortly taken back from him, may be tempted to make an excessive use while neglecting normal safeguards to keep them in good condition.

The next provisions of the section are again extremely important. Under these it is provided that upon the hearing of the action the Court may without prejudice to any other power—

(A) make an Order for the specific delivery of all the goods to the hirer, or

(B) make an Order for the specific delivery of all the goods to the owner and postpone the operation of the Order on condition that the hirer or any guarantor pays the unpaid balance of the hire-purchase price at such times and in such amounts as the Court, having regard to the means of the hirer and of any guarantor, thinks just and subject to the fulfilment of such other conditions by the hirer or a guarantor as the Court thinks just, or

(C) make an Order for the specific delivery of a part of the goods to the owner and for the transfer to the hirer of the owner's title to the remainder of the goods.

The Court cannot, however, make an Order under paragraph (B) unless the hirer satisfies the Court that the goods are in his possession or control at the time when the Order is made; nor can an Order be made under paragraph (C) for the transfer to the hirer of the owner's title to a part of the goods unless the Court is satisfied that the amount which the hirer has paid in respect of the hire-purchase price exceeds the price of that part of the goods by at least one-third of the unpaid balance of the hire-purchase price. There are also supplementary provisions enabling the Court to apply any damages awarded in the proceedings against the owner as being in reduction of the total hire-purchase price; and that an Order for the specific delivery of the goods under the section means an Order without an option for the hirer to pay their value and that the expression "price" in relation to any goods means such part of the hire-purchase price as is assigned to those goods by the agreement or failing that such part of the hire-purchase price as the Court may determine. It is also provided that where an owner has recovered part of the goods in contravention of s. 11, the provisions of s. 12 shall not apply in relation to any action by him to recover the remainder of the goods.

Of these provisions the power enabling the Court to allow the hirer to retain the goods on paying the outstanding balance of the purchase price by such reduced instalments as the Court thinks just is likely to be of the greatest importance. The terms of such an Order are to depend upon what the Court thinks just having regard to the means of the hirer and any guarantor and apparently no other consideration is to influence the Court. However, the power is permissive and it would appear reasonable to suppose that the Court may consider whether the instalments which the hirer can afford are such as the trader may reasonably be asked to accept. Considering the matter from the trader's point of view, the Court may no doubt in certain cases be influenced by the extent to which the trader ought to have considered at the time of the signing of the agreement whether there was a risk of a change in the hirer's circumstances, e.g., unemployment. The power to order a transfer to the hirer of the owner's title to any part of the goods will be useful in cases where the hirer has paid a substantial part of the purchase price but cannot keep up further instalments and it is unfair that the trader should have both the goods and the money. The formula determining when this may be exercised is rather involved and an example may make the position clearer. Suppose furniture has been let at a total purchase price of £75 and the hirer has paid £50 leaving an unpaid balance of £25. A third of the unpaid balance is £8 6s. 8d. and the Court can order the transfer to the hirer of the owner's title in such part of the furniture as was originally sold for £41 13s. 4d. being the amount paid by the hirer less one-third of the unpaid balance. This minimum margin has been inserted by the House of Lords to protect the interests of traders.

Notwithstanding this provision it is clear that the section as a whole confers a very wide discretion upon County Court Judges, and lawyers may well be pleased that the legislature displays such confidence in County Court Judges.

The same confidence is, of course, also reflected in s. 16 of the Administration of Justice (Miscellaneous Provisions) Act, 1938, which extends the jurisdiction of County Court Judges to disputes involving £200 subject to the right of the defendant to have the matter transferred to the High Court if the amount is more than £100.

The next section of the Act (s. 13) contains detailed provisions to deal with the position which will arise when the Court has made an Order postponing the operation of an Order for the specific delivery of goods to the owner. In such circumstances the hirer is deemed to be a bailee of the goods under and on the terms of the hire-purchase agreement; however, he is not to be liable for any further sum on account of the hire-purchase price except in accordance with the terms of the Order, and the Court may modify the hire-purchase agreement or any guarantee relating thereto as it considers necessary. In the event of any breach of any condition of the postponement or any term of the agreement or a wrongful disposal of the goods, the owner is not to take civil proceedings except by application to the Court by which the Order for postponement was made. But in the case of a breach of any condition relating to the payment of the unpaid balance of the hire-purchase price, the owner need not apply to the Court for leave to execute the Order unless the Court has so directed. The Court is also empowered at any time during the postponement to vary the conditions of the postponement or the agreement or any guarantee relating thereto, to revoke the postponement or to make an Order under s. 12 for the specific delivery of part of the goods to the owner and the transfer to the hirer of the owner's title to the remainder of the goods.

Section 14 deals with a provision in the agreement for a minimum payment on the determination of the agreement. Any such provision is to be disregarded if the Court makes an Order for specific delivery for a part of the goods to the owner and the transfer to the hirer of the owner's title to the remainder of the goods, and when an Order for specific delivery of the goods to the owner is postponed, such a provision shall be disregarded unless and until the postponement is revoked.

What are known as "linked on" agreements are dealt with in the next section (s. 15). It frequently happens that, before the hirer of goods has paid all the instalments under an agreement, he wishes to acquire further goods from the same trader and it is a common practice for the trader then to stipulate that the first agreement should be destroyed and a new agreement entered into covering both lots of goods. In the result, it may happen that a default by the hirer in paying instalments leads to the whole of the goods being taken back although he may have paid more than the total amount due under the first of his agreements. To deal with this the new provision says that if goods have been let under a hire-purchase agreement and at any time after one-third of the hire-purchase price has been paid or tendered the owner makes a further hire-purchase agreement with the hirer comprising the same goods, the provisions of ss. 11 and 12 (restricting recovery of goods when one-third of the instalments have been paid) shall have effect in relation to the further agreement as from the commencement thereof, i.e., whether or not one-third of the instalments have been paid.

Section 16 of the Act contains provisions as to the bankruptcy of the hirer and the right of the hirer's landlord to distrain on the hirer's premises. First, it is provided that where, under the powers conferred by s. 12 of the Act, the Court has postponed the operation of an Order for return of goods to the owner, the goods are not during the postponement to be treated as goods in the possession, order or disposition of the hirer by the consent or permission of the true owner. Such goods, therefore, would not pass to a trustee in bankruptcy or be available

for distress by a landlord under what are known as the "possession order or disposition" clauses. The same section provides further that, after the termination of a hire-purchase agreement, or after an owner having a right to recover from a hirer goods let under a hire-purchase agreement has commenced an action claiming the recovery of the goods, the goods shall not thereafter be treated as goods comprised in that hire-purchase agreement for the purposes of s. 4 of the Law of Distress Amendment Act, 1908. It will be remembered that this last-mentioned Act defines a number of cases where goods are not to be available for distress by a landlord, but the Act does not apply to goods comprised in a hire-purchase agreement made by a tenant which are, therefore, liable to be distrained upon. In *Jay's Furnishing Co.* v. *Brand & Co.* [1915] 1 K.B. 458, the Court of Appeal held that, although the owners of the goods had served on the hirer a written notice that his agreement was terminated and demanded the return of the goods (on account of the fact that the hirer was in arrear with his payments) the goods were not protected from a distress levied by the andl ord on the following day, because in the opinion of the Court they remained goods comprised in a hire-purchase agreement so long as some contractual relation under the agreement relating to the goods still subsisted, e.g., the right to enter upon the premises and retake possession of them. The effect of this decision was modified by the decision in *Smart Bros. Limited* v. *Holt* [1929] 2 K.B. 303, where it was held in very similar circumstances that if the hire-purchase agreement contained a clause providing that the owners might in case of default by written notice to the hirer forthwith and for all purposes absolutely determine and end the agreement and the hiring thereby constituted, so that thereafter the hirer should no longer be in possession of the goods with the owner's consent and neither party have any right under the agreement, the exercise by the owners of their rights under such a clause had the effect of so completely determining the hire-purchase agreement that it could not thereafter be said that the goods were comprised in a hire-purchase agreement within the meaning of the Law of Distress Amendment Act, and accordingly, the goods could not be distrained upon by the landlord. Following upon these decisions it has become a common practice for a hire-purchase agreement to contain two separate clauses with regard to the determination thereof:—

(A) A clause enabling the owners to determine the agreement and demand the return of the goods, with power for the owners to enter upon any premises where the goods may be placed to re-take possession of them; and

(B) A clause similar to that appearing in the agreement in the *Smart Bros. Case*, which may perhaps be called an absolute termination clause and is intended for use in an emergency where the owners learn that there is an immediate threat of distress being levied on the goods by the hirer's landlord.

It will be appreciated that under the new provisions the importance of the *Smart Bros. Case* disappears, as after the hire-purchase agreement has been terminated the goods are no longer to be treated as comprised therein, and for the purposes of the Act there would appear to be no distinction between the ordinary termination clause and an absolute termination clause. It is important, however, to observe that except where a postponement order has been made, goods which by virtue of the new Act are no longer to be treated as comprised in a hire-purchase agreement may yet be subject to distress as being within the possession order or disposition of the hirer with the consent of the owner. Attention has been recently drawn to this point by the decision in *Times Furnishing Co.* v. *Hutchings* (1938), 1 All E.R. 422, where it was stated that the owner must take active steps to recover possession of the goods if he wishes to establish that his consent to their possession by the hirer is withdrawn, and a clause in the agreement providing that such consent shall *automatically* determine if the landlord takes any steps to levy a distress is insufficient to protect the owner.

Section 19 of the Act contains special provisions as to installation charges. This section was inserted at the instance of certain public utility companies and provides that the expense of installing, e.g., an electric line, is to be added to the hire-purchase price in arriving at the total hire-purchase price for certain of the purposes of the Act.

Section 20 of the Act says that it is to apply only to agreements made after the commencement of the Act, i.e., 1st January, 1939, but (among others) the section dealing with the recovery of possession of goods where one-third of the hire-purchase price has been paid and the sections giving the Court wide discretionary powers in an action for recovery of possession of goods, and also the section dealing with bankruptcy of the hirer and distress on the hirer's premises are to apply after the 1st January, 1939, in relation to agreements made either before or after that date.

Having considered the Act section by section, it may now be useful to see what modifications the Act is likely to call for in forms of hire-purchase agreement to which it will apply. It is thought that for the future hire-purchase agreements to which the Act does not apply on account of the total hire-purchase price being greater than the limits specified in s. 1 will continue in much the same form as heretofore. Even if traders, e.g., dealers in furniture, who are likely to be effecting sales on hire-purchase both under and above the limiting figure mentioned in the Act should feel disposed to have all their agreements in a standard form, it is difficult to see, for instance, how the statutory notice appearing in the Schedule to the Act could be incorporated in an agreement to which the Act does not apply as it refers to provisions of s. 12, which, of course, have no relation to agreements outside the scope of the Act. Traders who use two separate forms of agreement will be well advised to see that the forms have on them a bold heading "To be used only where the total hire-purchase price is less than £50," or as the case may be.

It is thought that an agreement to which the Act applies will have to be modified considerably from the forms now in use, and it is suggested that the following amendments, and possibly others, would be desirable:—

(1) The agreement should contain an acknowledgment by the hirer that he has been informed in writing of the cash price of the goods as required by s. 2 of the Act.

(2) In further compliance with s. 2, the agreement should also state the hire-purchase price, the cash price and the amount of each of the instalments and the date or the mode of determining the date upon which each instalment is payable, a list of the goods to which the agreement relates and, of course, the statutory notice appearing in the schedule to the Act.

In view of the provisions of s. 12, which contemplates an apportionment of the hire-purchase price where several articles are comprised in the same agreement, it may be desirable to assign a separate price to each part of the goods.

(3) It would appear that there is no real necessity to insert a clause giving the hirer an express power to determine the agreement, as s. 4 gives him this power and also imposes upon him liability to pay a minimum sum in the event of his so doing.

(4) None of the provisions rendered void by s. 5 of the Act should, of course, be inserted in the agreement.

(5) The agreement should state that the goods are second-hand goods if such is the case, so as to exclude the implied condition that they are of merchantable quality.

(6) If it is thought desirable to exclude the implied condition that the goods are reasonably fit for a purpose which the hirer has expressly or by implication made known to the owner, there must be a clause to this effect, and it would be a wise precaution for there to be a separate certificate at the end of the agreement by which a hirer would acknowledge that the clause was brought to his notice and the effect of it made clear to him before he signed the agreement.

(7) On the whole there seems to be no reason why the clauses at present in use enabling an owner to terminate an agreement and re-take possession of the goods in case of default in payment of the instalments should not be retained. The effect of the new provisions in the Act is that if one-third of the hire-purchase price has been paid, the owner can only exercise his power of taking back the goods with the consent of the hirer; nevertheless provided he obtains the hirer's consent (which in view of the drastic effects following on a contravention of s. 11 should be in writing signed by the hirer) there is no reason why the owner should not re-take the goods when there has been a default in much the same way as heretofore. It might be wise for the guidance of traders to qualify the power to re-take the goods by saying in the agreement that when one-third of the purchase price has been paid it is only to be exercised with the hirer's consent and, of course, there should be no attempt to give the owner power to enter upon any premises to re-take the goods. What I have previously called the absolute termination clause based on the decision in *Smart Bros.* v. *Holt* seems to be no longer required.

(8) The agreement should contain an undertaking by the hirer to keep the goods in his possession or control as s. 7 of the Act imposes on the hirer a duty to give information as to the whereabouts of the goods only if there is a clause of this nature.

So much for the detailed working of an Act which has received a wide measure of support from all political parties. What is likely to be its general effect in practice? Speaking as one who has prepared hire-purchase agreements with the object of giving to traders every possible right and power permitted by the law, and as one who has spent much time at Poor Man's Lawyer centres condoling with unfortunate hirers against whom such agreements were being enforced, I think the Act is a good one. It is aimed, of course, almost entirely against hire-purchase traders, but for the best class of such traders it imposes few obligations more onerous than those which they already voluntarily accept. To a minority of less scrupulous dealers the Act should serve as a salutary check; both in enforcing with excessive severity the powers hitherto permitted by the law and (indirectly) in allowing their goods to be sold to people whose means are insufficient to pay the required instalments. I think it is a pity that the exercise of the Court's powers on the hearing of an action for recovery of the possession of goods should depend so much on the judge's discretion; inevitably different judges will take different views of what is just and equitable in such cases. But it is difficult to think of any satisfactory alternative. The Act might possibly also with advantage have imposed some limit on the period over which instalments may be made payable. When it takes four years to pay for furniture it is not surprising that hire-purchase should be popularly known as the "never-never" system. These, however, are points of detail. It must now be left for traders and their customers to see how the new provisions work out in practice, and it may confidently be predicted that lawyers will be called upon to play a considerable part in assisting them with their advice.

Mr. F. G. JACKSON (Leeds) asked what would be the position of a trustee in bankruptcy when the bankrupt had bought a quantity of goods by hire purchase and had paid a considerable portion of the instalments; did the trustee acquire the bankrupt's rights so that the goods could be retained as assets? If so, this would in some cases be advantageous to the creditors.

Mr. LITTLER answered that the trustee had those rights under the agreement and the Act. The trustee would be entitled to apply to the Court for an order that, as a certain proportion of the price had been paid, a part of the goods should be transferred to the trustee.

Mr. J. E. ALLEN-JONES (Manchester) wished to draw attention to the possibility of overcoming the difficulties in the new Act by subterfuge. For example, a man might say that he was charging £30 for a new car and allowing £30 for the old one in part exchange, thus bringing the total to £60, so that the Act did not apply although in fact the second-hand car might be worth not more than £5. He wondered if that method would be used frequently to prevent a transaction being brought under the new Act.

Mr. LITTLER considered that the practice would be a very dangerous one for the owner, as it was not permissible to conceal the substance of a transaction by any colourable device.

Mr. F. E. LEFFMAN (London) supposed that some meaning should be given to the words "total purchase price," as distinguished from "hire-purchase price."

Mr. J. B. LEAVER (London) read the following paper:—

THE EFFECT OF THE NEW RULES ON MORTGAGEES' RIGHT TO POSSESSION OF MORTGAGED PROPERTY.

It is no doubt within the recollection of practitioners that by reason of recent amendments of the Rules of the Supreme Court, relating to actions for possession of mortgaged property, and for the recovery of moneys due to a mortgagee, effected by Ord. V, r. 5A, and Ord. LV, r. 5A, a great change has come over the scene, with respect to the position of a mortgagee, when enforcing his rights against his mortgagor.

Under Ord. V, r. 5A, as left by R.S.C. (No. 3), 1936, and R.S.C. (No. 1), 1937—

> "Every action in which there is a claim for payment of principal money or interest secured by any mortgage or charge upon real or leasehold property or a claim for possession of any such property forming a security for payment to the plaintiff of any principal money or interest shall be assigned to the Chancery Division.
>
> "Provided that this Rule shall not apply to an action assigned to the Probate Divorce and Admiralty Division by section 56 (3) of the Act."

This amended rule assigns to the Chancery Division (*a*) actions in which there is a claim for principal or interest secured by mortgage or charge on real or leasehold property, and (*b*) actions in which there is a claim for possession of any real or leasehold property forming the security for payment to the plaintiff of any principal money or interest.

Actions for the possession of any other kind of property, upon the security of which money has been loaned, or for the recovery of money secured on any property, other than real or leasehold, remain in the King's Bench Division.

It is important to note that by Ord. III, r. 6 (3A) (added by R.S.C. (No. 1), 1937), a cause "where the plaintiff claims possession of any property forming a security for the payment of money," may be launched by special endorsed writ. This new sub-rule should be read in conjunction with Ord. V, r. 5A, above. The effect thereof, would appear to be, that an action in which any such claim is made, although assigned by Ord. V, r. 5A, to the Chancery Division, may be launched by a special endorsed writ in that Division, with, so far as the rules go, the consequential advantage of adopting the machinery of Ord. XIV in that Division, but it is important to note, that if the property, possession of which is claimed, is property other than freehold or leasehold, the action may be launched by special endorsed writ in the King's Bench Division.

Order LV, r. 5A, now reads as follows:—

> "Any mortgagee or mortgagor, whether legal or equitable, or any person entitled to or having property subject to a legal or equitable charge, or any person having the right to foreclose or redeem any mortgage, whether legal or equitable, may take out as of course an originating summons, returnable in the chambers of a Judge of the Chancery Division, for such relief of the nature or kind following as may by the summons be specified, and as the circumstances of the case may require; that is to say:—
>
> "Payment of monies secured by the mortgage or charge, sale, foreclosure, delivery of possession by the mortgagor whether before or after foreclosure, redemption, reconveyance, delivery of possession by the mortgagee."

The Rules of the Supreme Court (No. 3), 1936, added the new r. 5A quoted above, and added the words "payment of monies secured by mortgage or charge" before the word "sale" above. The Rules of the Supreme Court (No. 1), 1937, added the words "whether before or after foreclosure" after the words "delivery of possession" although the rule is printed in the "Yearly Practice" as above.

On the 22nd April, 1937, the Judges of the Chancery Division gave the following directions with respect to applications by originating summons for payment or for possession under r. 5A above:—

> "In every case the plaintiff's right to the Order sought must be established. There is no right to an Order merely because the defendant fails to appear."

As mentioned above, a distinction is drawn between similar claims arising in respect of, on the one hand, freehold or leasehold property, and on the other hand, other property. The first is assigned to the Chancery Division, whilst the second remains in the King's Bench Division.

These amendments then, firstly, bring into the Chancery Division actions in which there is a claim for possession of any freehold or leasehold property forming a security for the payment of any principal money or interest, which were formerly brought in the King's Bench Division, and often, almost invariably, by specially endorsed writ under Ord. XIV. Secondly, by virtue of Ord. III, r. 6 (3A) above, an action embodying such a claim can be launched by a specially endorsed writ in the Chancery Division, with the advantage of adopting the machinery of Ord. XIV, although, under the Judges' Directions, there is no right to an order merely because the defendant fails to appear; and thirdly, these actions may now be commenced by originating summons.

I think it may be convenient to consider the effect of these amendments under the following headings:—

(1) Was the transfer of this particular class of business from the King's Bench Division to the Chancery Division necessary or desirable?

(2) Has such transfer resulted in a more efficient dispensation of justice?

(3) What effect has such transfer had on the legal profession? and

(4) What suggested amendments (if any) can be made?

In connection generally with the above four questions, it may be borne in mind that at least one authority has suggested that the transfer to the Chancery Division may not be *intra vires*.

The "Encyclopædia of the Laws of England," 3rd ed., vol. II, at p. 763, states as follows:—

> "It is worthy of remark that although it was thought necessary (or desirable) to assign jurisdiction to the Chancery Division in causes and matters relating to the redemption and foreclosure of mortgages *by legislation* other important powers have been conferred upon this Division merely by rule of Court. Thus without any Statute in that behalf them enabling the Rule Committee (in 1936) directed that

every action in which there is a claim for principal or interest secured by mortgage or charge on real or leasehold property or a claim for possession of such property forming security, shall be assigned to the Chancery Division (see R.S.C., Order V, Rule 5A). Whether this rule is *intra vires, quære.*"

With respect to question (1), I think anyone who had experience of the King's Bench Division procedure for securing, by specially endorsed writ, the recovery of amounts due, together with the possession of mortgaged premises, would admit that this was a specially efficient and appropriate procedure for a vast number of cases where amounts due are claimed under a security, together with an order for possession of the property forming the subject of the security.

It would be idle to state that snap judgments were obtained under this procedure, as exactly the same notice of claim was given to a defendant as was given in any other type of claim, and exactly the same opportunities for defence were available to him as were available in any other claim, to which a legitimate defence was available, and therefore, so far as the claim for payment of money was concerned, there was, and could be, no difference between this, and any other claim, for a liquidated demand.

The only difference, if difference there is, lay in the fact that possession of the premises charged was claimed, and as that particular claim was in cousinly relationship with the claim for the amount due, and was indeed only an alternative remedy for securing the amount due, I would suggest that the appropriateness of the two being joined together on the writ, and the fact that the two claims were so joined, did not, and could not, differentiate a claim for possession of premises from any other claim by a plaintiff against a defendant.

Furthermore, what logical distinction can be drawn between claims under the rules quoted, in respect of freehold or leasehold property, which are now Chancery matters, and similar claims in respect of other property which are still King's Bench Division matters? or between a mortgagee's claim for possession and amounts due, and a landlord's claim against his tenant for possession and rent or mesne profits which latter claim is still a King's Bench matter?

"Coote on Mortgages" describes a mortgagee's estate as—

"(1) a legal interest real or personal, according to the nature of the security;

"(2) a beneficial interest, which in the eye of equity is personal estate."

Prior to 1926, a mortgagee in whom a legal estate was vested was regarded in law as being the owner of the property with all rights incident to such ownership. He could enter, and still can enter, into possession of the mortgaged property at any time after execution of the mortgage, but he was in a jeopardous position in so doing, by reason of the Statute 5 Richard II, which penalises the entry of premises "with strong hand."

In order to avoid this possible penalty, the mortgagee generally elects to commence proceedings for possession, but in doing so he is only asking the Court to recognise a right which was vested in him from the date of the commencement of his mortgage, and which right he could, if exercised prudently, exercise himself.

The rules above have been framed under the provisions of the Supreme Court of Judicature (Consolidation) Act, 1925, s. 99. The 1925 Act confirms the old Judicature Act, of 1873, s. 24, s. 36 of the 1925 Act being as follows:—

"Subject to the expressed provisions of any other Act, in every civil cause or matter commenced in the High Court, Law and Equity shall be administered by the High Court and the Court of Appeal as the case may be according to the provisions of the seven sections of the Act next following, being Sections 37 to 43."

Section 44 makes it clear that the rules of equity shall prevail where there is a conflict or variance with the rules of the common law.

The powers under the Act are, however, very wide and it seems that whatever may be the legal rights of the mortgagee, there is a full discretion in the Court as to when and how the mortgagee shall be entitled to exercise those rights.

Order XIII, r. 17, should also be borne in mind, which rule is as follows:—

"In any action in which the plaintiff is claiming any relief of the nature or kind specified in Order LV r. 5A no judgment shall be entered in default of appearance without leave of the court or a judge who may require the application for leave to be supported by such evidence as might be required if relief were being sought on originating summons under Ord. LV r. 5A and may require notice of such evidence to be given to the defendant."

This rule extends to every action in which a mortgagee is seeking to obtain moneys secured by his mortgage, and relates to cases for the recovery of instalments or arrears of interest.

It seems to me, that there is nothing in this class of claim to take it from the category of those claims which are properly dealt with by the King's Bench Division, and might I add that the expeditious machinery of that Division is in my view eminently suited to deal with matters such as these.

Under that procedure a time-table such as the one set out below could be maintained, although *an order for possession was invariably made at once.*

	Days.
Writ	1
Service (minimum)	2
Appearance	8
Summons for judgment in default and hearing	8*
Order on hearing	—
Service (minimum)	2
Possession, say	21
Drawing Order and instructing Sheriff, attending for possession	5
Total ..	47 days.

* Depending on the Master's appointment.

This total allows twenty-one days for possession, but this could be obtained at once if desired, reducing this period to twenty-seven to thirty days.

It is not inappropriate to remember that by reason of the action of building societies since the War, this class of claim has multiplied to an enormous extent, owing to the growth of ownership of small dwellings, and it might be of interest to recall that at this time some 1,400,000 properties are at present the subject of building society mortgages, the vast majority of which are mortgages of under £500, so that if it could be said that the new procedure has been invoked in order to deal with this new class of owner in defending a claim by his mortgagee, it can equally be said that it is desirable in the mortgagor's interest alone, as a small man, that the procedure should be as expeditious and as cheap as possible. This figure of 1,400,000 is constantly increasing and shows an increase of 100,000 over the figure of the previous year, and although definite figures are not available, is probably nearly ten times the relative figure for 1913.

I now pass to my second question. Has such transfer resulted in a more efficient dispensation of justice?

(*a*) I think there will be no question that, from the point of view of the mortgagee, he is not now able to secure his rights with that celerity with which he secured them under the old procedure, and when consideration is given to the capital amounts which are at stake under mortgages (such capital amounts often bearing a high relationship to the financial position of the mortgagor) it is important that the mortgagee should not be held out of his remedies for one moment longer than is necessary.

It has, however, been the practice of the Chancery Division up to date, not to make an order on the first hearing of an originating summons, but to give time for payment, and in a large number of cases as many as three or more adjournments have been given in order to see if the mortgagor pays, at his convenience, the arrears of payments claimed in the proceedings, and often without consideration to the arrears of payments which are accruing during the course of this process, in the case of an instalment mortgage.

Not only so, but during the past long vacation, it was difficult to secure an order, as, unless urgency was shown, the Courts would not treat the case as a proper one for vacation business. It was stated, as is, of course, correct, that it must not be considered a *primâ facie* case of urgency merely because it concerned a building society mortgage. One practitioner has stated to me, after a large experience of these cases, that if he was a mortgagor under an instalment mortgage, and was really determined to withhold the mortgagee's remedies, he could, by artifice, and by employing delaying tactics, withhold a final judgment for a period of nearly one year.

The procedure now appropriate, and the usual time taken, are set out in tables below:—

Issue of originating summons or writ.
Service.
Search for appearance.
Long and detailed affidavit showing history of account and three or four exhibits.
Affidavit of service.
Filing.
Copies of summons and affidavits for Chambers.
Obtaining appointment to hear.
Notice to defendant of hearing, whether he has appeared or not.

Appointment may be five to eight days after request.
Notice to defendant of each adjournment.
Long Chancery procedure of orders being sent to Registrars to be drawn and two appointments to settle and pass the same.
Affidavit of non-compliance with order must now be made before writ of *fi. fa.* is issued.

Time-table.	*Days.*
Summons	1
Service (minimum)	2
Appearance	8
Obtaining evidence in support	4
Appointment	6
Adjournment for payment	14
Settling and passing order	4
Service (minimum)	2
Possession (from service)	21
Fi. Fa. and affidavit	2
Sheriff	5
Minimum Period ..	69 days.

In ordinary practice, say 70 days, or a minimum of over two months are necessary in order to obtain and enforce orders, where there is only one adjournment. As I have mentioned, during the long vacation last year, solicitors were unable to obtain appointments on their summonses in ordinary cases, on the ground that it could not be considered urgent business. This year, however, a summons will be heard if urgency can be shown, but it is somewhat difficult to appreciate what is to be considered an urgent case.

It is also a little difficult to understand upon what principles the Court is at present favouring the mortgagor with extensions of time for payment. This is particularly so when one bears in mind the meagre evidence, on the part of the mortgagor, before the Court, at the time such orders are made. So far as the plaintiff is concerned, there is generally a statement as to the amount, and a short history set out in the affidavit which the mortgagee must make in support of his summons. The mortgagee thus states his position on oath, but, on the other hand, with respect to the mortgagor there is an entirely new departure from ordinary procedure, in that the mortgagor may attend before the Court at any stage of the proceedings, and without having entered appearance make a statement of his position, which statement he is not called upon to make on oath.

It seems to m that if the present procedure is to continue, it must at least be standardised by an understanding between the Masters as to the time within which all orders for possession, and orders for the amount due, are to be made, and I believe this is in process of being realised, by, in the ordinary case, a general understanding that where the defendant does not appear, 14 days be given for payment of arrears, and if default is then made, an order for possession is granted on the summons being restored directing possession within 21 days from the date of service of the order, but it would appear that the majority of Masters will not make an order for possession until there has been a definite failure to pay by the defendant. If a large discretion is vested in the Court, this discretion must have varying interpretations, in the absence of a definite understanding, on the part of varying Masters, and it may even go so far as to bring about a personal tradition as to the orders which may be made by any one Master, as against a tradition as to what can be expected from the Court as such. In a matter such as this, I submit that discretion should be standardised, and should not vary either with reference to the length of the Master's foot, or otherwise.

(*b*) As to the mortgagor: just as I am convinced that the present procedure certainly does not tend to favour the mortgagee, I am equally of opinion that the present procedure may not, in some cases, tend to favour the mortgagor, and thus may, to an extent, defeat its own object. I have had brought to my notice by a fellow practitioner a case which illustrates this.

An originating summons was issued on the 21st April, 1937, for arrears of mortgage instalments at the rate of £11 6s. per lunar month, amounting in total to over £82. The original amount of the mortgage was £1,627 4s.

The mortgagor was represented by solicitors, but no appearance was entered, and an arrangement was made between the representing solicitors for payment by instalments of the arrears, but this arrangement was made without it being specifically mentioned that, in default, proceedings would be continued. Default was made under the arrangement, and the summons was restored and an application made for the balance of the claim outstanding, but the Master took the view that the arrangement avoided the mortgage deed, and that judgment could not now be obtained for the balance of the amount claimed. Authorities were cited against this view, and the summons was adjourned to the Judge in Chambers. Eventually judgment was given for the mortgagee society. The result was that the defendant, who had not made the least resistance in the proceedings, was mulcted in £50 party and party costs directly, and a further £15 12s., solicitor and client costs.

I have had similar cases brought to my notice which emphasise that this discretion, when it is sought to exercise it on behalf of a mortgagor, should be exercised with great care, and even reluctance, because to exercise, too extensively, the discretion, may only mean that it is exercised on behalf of a mortgagor who is either not concerned, or is indifferent, in the matter. After all, the ordinary mortgagee only brings proceedings when he is driven thereto by the failure of all other methods to secure his rights. Even if the mortgagor is not indifferent, it may be questionable whether any postponement will be of value to him, unless his circumstances have so changed that it is clear he is now able to do that which he was unable to do previously. Otherwise, any adjournment may only have the effect of increasing the amount of capital debt by the amount of accruing interest, with the addition of costs. Furthermore, I doubt whether in many cases the Master has before him all the evidence to enable him to form a conclusion as to whether or not adjournment will ultimately benefit a mortgagor. Naturally a mortgagor, should he ask for adjournments (which is rare), presents his prospects in the most optimistic light, and adjournments granted on this evidence may only increase the financial load upon the mortgagor, when in the mortgagor's own interests it may be best for the mortgagee to realise the security, and lift the load from the mortgagor, as early as possible.

I pass now to my next point as to the way in which the legal profession has been affected.

There has been some feeling in the profession with respect to the costs relating to the new procedure, as it is obvious from what has been said, that the work entailed on behalf of a mortgagor has been largely increased as a result of the amended rules. According to The Law Society's Annual Report:—

"A complaint was received by the Council relating to the method of awarding costs to a mortgagee's solicitor under the practice directions issued on the 22nd April 1937, which provide that, when an order is made for the recovery of a sum of money, whether alone or coupled with an order for possession, the costs awarded will normally be in accordance with the table of fixed costs in respect of money claims in force in the High Court.

"The facts were, that solicitors issued a writ in the Chancery Division, claiming the balance of money due under a mortgage after the property had been sold by their client, the mortgagee. The Defendant did not enter an appearance, but, in order to comply with the practice directions, the plaintiff's solicitors, instead of signing judgment in default of appearance, had to take out a summons for leave to sign judgment in the same way as would have been done in proceedings under Order XIV in the King's Bench Division if the Defendant had appeared.

"On the hearing of the summons, the Master made the order asked, but proposed to award the plaintiff's costs upon the scale fixed for judgment in default of appearance. The plaintiff's solicitors objected to this proposal and pointed out that, whereas in the King's Bench Division the scale for judgment in default of appearance applied only to cases where judgment could be signed without the necessity for an order, in the present case exactly the same work had been necessary to obtain judgment as under Order XIV, and submitted that the higher scale fixed for judgment under Order XIV applied to the case. The solicitors pointed out that the judgment was obtained pursuant to an order, although in fact there was no appearance.

"A letter was accordingly written to Mr. (now Lord) Justice Clauson enclosing a copy of the complaint and stating that, while there was no doubt some definite reason for the allowance of the smaller sum of costs the solicitors' claim for the higher fee did not seem unreasonable, they having done very much what they would have had to do under Order XIV.

"A letter was received, in reply, pointing out that the effect of adopting the King's Bench fixed scales of costs is that the defendant is burdened as a matter of personal liability with no heavier costs by reason of the new procedure than he was burdened with before. It is true that the plaintiffs' solicitor incurs somewhat heavier expense in obtaining the order in default of appearance than he was put to under the old procedure. The plaintiff's solicitor, however, is free to charge against his client, subject in due course to taxation or moderation, the proper remuneration (as between solicitor and client) for his work, and the client,

as mortgagee, would be entitled, as part of his mortgagee's costs, charges and expenses, to credit for that sum as against proceeds of sale or on taking the mortgage account.

"It appears that the point was raised several times when the existing practice was first put into force, and it has been recognised that the matter, as explained above, works out with ultimate fairness to all parties."

With all respect, I think it is possible that another view might be taken with respect to the conclusion reached above, namely, "it has been recognised that the matter, as explained above, works out with ultimate fairness to all parties."

I think one is entitled to ask, with great respect, if this is quite so. Surely this matter gives rise to at least two comments. First, is it right, in law, or in equity, which, in their very nature, command respect by their exactitude and certainty, that things should be made to fit which obviously do not fit, according to the practice and rules as they exist? Fixed costs, in default of appearance, were appropriate to the procedure in the King's Bench Division, but the same costs are not so appropriate to the procedure as transferred to the Chancery Division, and I think it is to be deplored that, when the procedure is altered, the scale of costs is not altered as between party and party, so as to make the remuneration consistent with the work to be done and the procedure involved, without having resort to the reason put forward, that the plaintiff's solicitor is free to charge his client the appropriate remuneration. Surely it is not a matter of the solicitor charging this against his client, but of having the right to compel, in an appropriate case, the defendant, whose conduct has given rise to the action, to pay, as a consequence of the plaintiff's remedy, that amount which is due in respect of the work involved by reason of such conduct.

To say that these costs can be added to the mortgage debt, or dealt with either on the sale or on taking the mortgage account, I submit, with respect, hardly meets the case, because, if there is a deficiency on such sale, either by reason of the extra cost added or otherwise, then the plaintiff may be compelled anew to take action, and a new judgment against the mortgagor, into which position a mortgagee should not be thrust. Surely the right procedure is, as I have said, to make a scale of costs appropriate to the new procedure, if it is settled that the new procedure is one which is to endure through the years, when the plaintiff will be able to claim against the defendant, as part of his judgment, the amount which is due to him in respect of costs, having regard to the work which is involved.

With respect to the new procedure, I confess to a feeling, that in an effort to do justice to the mortgagor, and in tenderness towards him, there is creeping in a certain relaxation, (*a*) with respect, as I have mentioned, to giving time for payment, and (*b*) with respect to giving the mortgagor the opportunity of making statements which are not on oath, and attending at any stage of the proceedings without troubling to enter appearance, and (*c*) by paying heed to letters which are written when the defendant is unable, or does not choose, to appear, and lastly, with respect to costs as before mentioned.

It seems to me that the procedure, as it stands at present, may tend to give to defendants a new idea as to the certainty, exactitude and inevitability of law, which, I suggest, are three of the elements which go to make for that wholesome respect which is essential to its operation.

And, lastly, I think it may well be that these matters which I have mentioned may call for amendment, and that the aim which the framers of the rules had in mind, namely, to give the fullest opportunity for enquiry into any claim put forward by a mortgagee, so as to make certain that every opportunity is given to a mortgagor to recoup his position, and not to be deprived of any rights, if he can show that he can ultimately perform his duties, may be given, consistent with the granting of his rights to the mortgagee, where it is proper that such rights should be granted, with as little delay as may be.

How this end can be attained is a matter for consideration. Frankly, I would like to see the old procedure restored, as I consider that, as far as can be, it attained the ideals in mind, but if this cannot be, then I think that there is need of a shorter and less expensive procedure, and a standardising of the discretions which are vested in the Court, in order that plaintiffs may know how their rights will be received by the Court, and also that defendants may know what they will be compelled to do in performance of their duties. Particularly, in this connection, do I consider that this class of action should have attention in vacation, involving as it does, considerable sums of money for both plaintiff and defendant. I think that if these points were met, there would be an end to some of the cases which have been brought to my notice, which rather suggest that a certain class of defendant has taken advantage of the lengthened procedure in order to withhold the plaintiff's right until the very last moment, and make payment of the amounts ordered only when the summons was on each occasion restored to the Master's list for an order in default.

It may be said that if these payments are made, then the plaintiff secures his rights, but it must be remembered that these are only rights as claimed at the time of issuing of process, and that under instalment mortgages, amounts are accruing, and under other mortgages, interest is accruing, all the time while the action is in being, and, with respect to these, the plaintiff may find that when he has secured the rights which he originally claimed, new rights have accrued, which leave him no option but to start process again, although the fact that payment by the defendant has been made, may be evidence that the mortgagor could pay, but would not pay, until compelled to do so. This hardly tends to finality, is certainly not helpful either to plaintiff or defendant, and emphasises the desirability of a process which is as abridged as possible, and as cheap as possible.

It may be suggested that a possible solution is that actions, where money only is claimed under a security, should go back to the King's Bench Division, and operate under Ord. XIV, and that actions for possession only should be confined to the Chancery Division, but I think that the objection to this is that the two claims are obviously, as I have said previously, linked together; may be, in fact, interdependent, and to adopt this solution would, in my view, only tend to multiply actions.

It may be urged that a mortgagee has a right to commence an action for arrears in the County Court, but the new rules apply in principle to the County Court, the only difference being that in the County Court a defendant may admit a debt and offer to pay by instalments, but in this case, however, a defendant, if he attends and gives evidence, does so on oath. This procedure is again open to the objection which I have mentioned before, of new rights accruing whilst the process is in being.

In conclusion, I cannot resist the feeling that the rules, of which I have written, have not, so far, had the happy results which were hoped, and a going back to the position as it obtained two years ago would not in my view be retrogression, but an advance in securing with quickness and with certainty, and with relative cheapness, a determination of the rights existing between mortgagor and mortgagee in respect of claims for amounts due, and for possession.

I am of opinion that this would certainly tend to the advantage of mortgagees, without, at the same time, tending to the disadvantage of mortgagors.

Sir CHARLES MORTON (Liverpool) said that, as a member of the Rule Committee, he had heard a good deal from Mr. Justice Clauson about why the jurisdiction had been changed from the King's Bench to the Chancery Division. It had come to the attention of the Lord Chancellor that many mortgagors, buying their own houses and ignorant of the law, thought that there was no alternative but to default when they could not keep up the instalments. The mortgagees then signed judgment for the balance of the money and, having done that, went over to the Chancery side and moved for foreclosure without disclosing the money they had already received on account of the mortgage debt. The Lord Chancellor had formed the opinion that the proper remedy for this situation was that the usual remedy of the mortgagee should be moved to the Chancery side, and that he should be called upon to make an affidavit setting out the actual sum received: then the Court could proceed with the foreclosure in the usual way. What needed to be done was to see that the costs were the same in Chancery as in the King's Bench Division and that the procedure under Ord. XIV was identical. One remedy was for district registries to be entitled to issue originating summonses, as the registries of Liverpool and Manchester were already allowed to do. Possibly there were some registries which could not be entrusted with this power, but there were many where the registrar was quite competent to deal with an originating summons. At present the mortgagee in the country had to take out an originating summons in London, a procedure which caused both delay and expense.

Mr. SYDNEY VERNON (Birmingham) declared that a moral to be drawn from the paper was that all objections would be largely overcome if some much-needed reforms could be effected in the Chancery Division. He had just been watching the adventures of a friend of his who had taken twelve months to effect the sale by the court of a simple and straightforward piece of property. He hoped someone would put forward some constructive suggestions for reducing the length and cost of Chancery proceedings.

Mr. O. S. FLINN (London) asked whether the delays set out in Mr. Leaver's timetable would apply in those cases

where the bank took up an equitable mortgage on property. Suppose that the representative of the bank went to the Court with a mortgage in his hand and said he wanted to sell the property for what he believed to be a reasonable sum, as great as was likely to be obtained, but that the mortgagor did not want to sell except at a price which would not readily be obtainable; meanwhile the outgoings were piling up and must be paid by the mortgagee unless he wished to abandon his security: could he apply to the Court for an immediate order to sell; and, if so, how long would it be before he got his permission?

Mr. J. E. ALLEN-JONES (Manchester) expressed warm approbation for the paper, and amazement that, even under New Procedure, it took such an enormous time to get possession, while the costs were absolutely ludicrous. If, he asked, the reason for the change of jurisdiction was that people had previously gone to the Chancery Division and got a foreclosure order without revealing how much they had collected, why could not an affidavit have been included in the foreclosure proceedings setting out the exact amount received? The whole business could then have been left in the King's Bench Division and the absurdity of the present situation avoided. Manchester solicitors were fortunate in that they had no difficulty in obtaining orders during the Vacation, and had the Salford Hundred Court, in which this new and difficult Chancery procedure had not come into force. The proceedings were not in the least like those of Ord. XIV. For example, if one proceeded against two mortgagors, or a mortgagor and a guarantor, six copies of the summons had to be prepared, one for each defendant and four for the Court. He had never been able to find out what the Court did with four copies. As another example, in proceedings for possession the mortgagor must receive a copy of the affidavit, which was of enormous length, setting out the whole proceedings under the mortgage; and the original mortgage must be exhibited. If, as not infrequently happened, the building society refused to produce the original mortgage, a copy must be exhibited, and this also might be of tremendous length. The costs thus became out of all proportion to the work, yet there was still the farce of costs only on a fixed scale. What costs a solicitor was really entitled to add was entirely unknown.

A member then asked if Mr. Leaver could explain the new procedure in district registries on a specially endorsed writ. In a case with which he had been connected, the solicitor seemed to have got a writ of possession issued in a very much shorter time than Mr. Leaver allowed, and had obtained judgment for the balance of the purchase money; but the procedure was a mystery to him.

Mr. S. O. MATTHEWS (London) pointed that Mr. Leaver had allowed two days for service, but as it had to be personal service, three or four weeks might be taken in finding the defendant.

Mr. L. H. A. PRATT (Cardiff) pointed out the connection with hire-purchase. The mortgagee suffered from the application of the principle that he should pursue all his remedies at once. There was a clear distinction between his claim and the ordinary claim of a landlord for possession.

Mr. F. E. LEFFMAN (London) asked Mr. Leaver what the Court would do if an applicant asked as of right for his costs to be taxed, and what he would get from the taxing master.

Mr. LEAVER, in reply, referring to the allegation that snap judgments had been obtainable under the old procedure, asked what the distinction was between these actions and any other class of action. He pointed out that the period of seventy days was a minimum; he had deliberately understated his case.

Mr. GEOFFREY C. BOSANQUET (London) read the following paper:—

THE INHERITANCE (FAMILY PROVISION) ACT, 1938, AND RESTRICTION UPON THE RIGHT OF TESTAMENTARY DISPOSITION IN ENGLISH LAW.

How far, if at all, should any claim of a man's family upon his property after his death be recognised by law and thereby a restriction put upon a testator's free right of disposing of his own as he will? Some such question as that is suggested by The Inheritance (Family Provision) Act, 1938 (1 & 2 Geo. VI, ch. 45), which received the Royal Assent in July last, and will come into force on the 13th July, 1939. And it is curious and, I think, interesting to find what development and changes there have been in the course of our history in the law governing the right of testamentary disposition of personal estate. For if, under this Act, an application is made on behalf of a party claiming the benefit of its provisions against the alleged injustice of a husband's or a father's will, this will not be the first time that proceedings have been taken in our courts by the widow or children of a deceased testator claiming to have a reasonable provision secured to her or them out of the husband's or father's estate. Certain it is that in old days there was a special writ called "*De rationali parte bonorum*" whereby the applicant claimed to have allotted to her or him a reasonable part of the deceased husband's or father's estate.

The basis of this writ was that when a man died leaving a widow and children his personal estate ought to be divided into three equal shares, one of which went as of right to the widow, one for division between the children, and the remaining third, which is said to have been named "the death's part," was free to be disposed of by his will. Similarly, if the deceased left only a wife and no children, or only children and no wife, the division was into two equal shares, of one of which the testator had free disposal by his will while the other belonged of right to the surviving wife or children.

It will be recognised that this tripartite division corresponds to that which still obtains under the law of Scotland, where the three parts are named "the wife's part," "the bairns' part" and "the dead's part," so that a testator having a wife and children cannot leave away from his family more than at most one-third, the other two-thirds going as of right one to the wife and one for division between the children.

It would appear that this tripartite division on which the writ "*De rationali parte bonorum*" was based obtained in England in the twelfth century. It is expressly mentioned by Glanvill in his "Treatise on the Laws and Customs of England," written in Latin about the year 1181 in the reign of Henry II, and again by Bracton in his "Laws and Customs of England," about 1264 in the reign of Henry III. There is also a reference to it in Magna Carta signed by King John in 1215. There, in dealing with the right of the sheriff to exact payment of any debt due to the King out of a deceased's estate, it is laid down that, when this has been done, the residue is to be left to the executors to carry out the will of the deceased "and if nothing be due from him to us (the King) then all the chattels fall to the deceased saving to his wife and children their reasonable parts." Thus the right of the deceased to have all his chattels and personal property dealt with according to his will is qualified by the proviso that this is subject to the right of the wife and children to their accustomed shares, these being, as we gather, one-third to the wife and one-third to the children, or, if there be a wife and no children or children and no wife, one-half to the surviving wife or children, as the case may be.

But while there undoubtedly was this procedure by writ "*De rationali parte bonorum*" and the right of the wife and children undoubtedly prevailed over a large part of England and Wales and was so recognised and given effect to by our courts, we soon find that we have stumbled upon an old legal controversy whether this writ would lie at Common Law or whether the custom of some county or district in which the testator lived or had personal estate must be pleaded to support it. In that controversy names of acknowledged authority can be cited on either side. If we go to the famous "Coke upon Littleton" we find that Littleton distinctly lays it down that "after the debts have first been paid the remainder of the goods is to be divided into three parts, one for the children, one for the wife and of the third part the testator has free right of disposal or if there be only a wife or only children then such free right of disposal extends to one moiety." On this passage Lord Coke's note is: "But it appeareth by the Register and many of our books that there must be a custom alleged in some county to enable the wife or children to the writ '*De rationali parte bonorum*' and so hath it been resolved in Parliament." Thus Littleton supports one view and Lord Coke the contrary.

A contemporary of Lord Coke, Henry Swinburn, published about the year 1590 his "Brief treatise of testaments and last Wills." There under the heading "What quantity of goods and chattels maie be devised by testament" he first deals with the cases where there is a custom for such tripartite or bipartite division as has been described, of which there are three different cases, in one of which he may dispose of only a third (where wife and children survive), in the second of half (only a wife or only children surviving) and in the third case of the whole (no wife or child surviving). He then continues "The fourth case is where here is no such custom . . . in which case albeit some were of this opinion that even by the Common Law of the realm the clear moveable goods were to be divided into three parts or into two parts as before whereof the wife and children were to have their parts and consequently that the testator could not dispose of any more thereof than the half or the third, being the death's part—nevertheless others (whose opinion hath prevailed) do hold the contrary, to wit, that there is no such division to be made by force of the Common Laws of this land but only by force of custom and consequently that it is lawful for the testator by the law of this realm (except in those

places where the custom aforesaid is observed) to dispose all the whole residue of his goods (his funerelles and debts deducted) at his liking and that the wife and children can claim no more thereof but according as the testator shall devise by his testament."

Some sixty years later than Swinburn's "Brief treatise of testaments and last Wills" we have about the middle of the seventeenth century Somner's work entitled "Gavelkind with sundry emergent observations both pleasant and profitable to be known of Kentish-men and others." There we find a section devoted to the discussion of this question "Whether the writ '*De rationali parte bonorum*' lie at the Common Law or by custom." After considering the earlier authorities on both sides, he writes: "If we shall admit (what some eagerly contend for) this rule and order of partition to have sometime been by law current throughout the realm yet by general disusage and discontinuance it is now, and that not lately, antiquated and vanished out of use both in this (of Kent) and other Counties surviving only (for ought I hear) in the Province of York and some few cities." This work, Somner's "Gavelkind," is said to have been written by 1647 although not published until after the Restoration in 1660.

It would accordingly appear that by some time before 1647 the right of a surviving wife or children to claim a reasonable part and to have recourse to the old writ "*De rationali parte bonorum*" applied only in the Province of York and certain cities and districts where a custom could be shown to support it. Nor did the custom long survive even there. For in 1692 an Act was passed (4 Wm. & M., ch. 2), "that the inhabitants of the Province of York may dispose of their personal estates by their Wills notwithstanding the custom of that Province." By that Act as from 26th March, 1693, widows, children and other kindred of testators in that Province were "barred to claim or demand any part of the goods chattels or other personal estate in any other manner than by their Wills limited any law statute or usage to the contrary notwithstanding." But the Act was not to extend to the freemen of the Cities of York and Chester.

Three years later in 1695 a similar Act was passed (7 & 8 Wm. III, c. 38) giving as from the 24th June, 1696, unrestricted right to any persons inhabiting or having any goods or chattels in the Principality of Wales or the Marches thereof "to dispose by their last Wills of all their goods debts and other personal estate to their Executors or such other persons as the said testators shall think fit in as large and ample a manner as by the laws and Statutes of this realm any person may dispose of the same within any part of the Province of Canterbury or elsewhere."

Finally in 1724 in an Act for regulating elections within the City of London and for preserving the peace, good order and government of the said City (2 Geo. I, c. xviii), s. 17, provides that "To the intent that persons of wealth and ability who exercise the business of merchandise and other laudable employments within the said City may not be discouraged from becoming freemen of the same by reason of the custom restraining the citizens and freemen thereof from disposing of their personal estates by their last Wills and Testaments it should be lawful after the 1st June 1725 for freemen of the said City to dispose of their personal estates to such persons and to such uses as they should think fit any custom or usage of the said City or any by-law or ordinance made or observed within the same to the contrary thereof in anywise notwithstanding."

Thus by these three Statutes the custom by which widows and children could claim their reasonable parts of the personal estates of their husbands and fathers was abolished in the Province of York, in the Principality of Wales and the Marches thereof and in the City of London. It is doubtful whether after that the custom survived in any part of England but, if so, it must have been finally swept away by the Wills Act of 1837, from which time until now there has never been any restriction upon the right of testamentary disposition of personal estate under English Law.

To the question posed by Somner "Whether the writ '*De rationali parte bonorum*' lie at the Common Law or by custom" the answer would seem to be that in early days the right of the widow and children to their reasonable parts and the consequent restriction upon the free right of disposal by will of personal estate was part of the Common Law of England, but that gradually this fell into disuse and came to be observed only in certain parts of the country where it was preserved as a custom, and that then, contrary to what had in former times been the case, the writ "*De rationali parte bonorum*" would lie only where a custom could be shown to support it. This is the view taken by Lord Macclesfield, Lord Chancellor, as appears in his judgment in the case of *Kemp* v. *Kelsey* (Prec. Ch. 594) in 1722, where he says "This custom of the City of London was the remains of the old Common Law that a man could not give away any part of his estate without the consent of his children and is so taken note of in Bracton; but it being found exceedingly inconvenient and hard it was by the tacit consent of the whole nation abrogated and grown into disuse—for what law has been ever made to repeal it? But in the City of London where the Mayor and Aldermen had the care of orphans they by that sole authority and power have preserved this part of the Common Law in London which is disused and disapproved everywhere else."

There is one further piece of evidence which seems of interest as throwing light upon this question whether the right of the widow and children to their reasonable parts of the personal estate of the husband or father was ever part of the Common Law of the land. Five years ago there was printed by subscription of the friends of the late J. P. Gilson, who had been Keeper of Manuscripts at the British Museum, a book called "Legal and Manorial Formularies" edited from originals at the British Museum and the Public Record Office. The printed text, which is in Latin, is taken mainly from a manuscript which had been secured for the British Museum by Mr. Gilson and of which the date is said to be 1300 or just after. On perusal of this book it is found that the manuscript or the earlier part of it is in fact a conveyancer's precedent book containing forms of deeds for various kinds of transactions. Here we have in fact a Prideaux or Key and Elphinstone of 1300 or thereabouts; and it is all the more interesting to conveyancers of our own time in that it was composed shortly after the passing of a new Conveyancing Act which revolutionised the law of land tenure, the famous *Quia Emptores* of 1290 which prohibited further subinfeudation. In his introduction to the precedents the author refers to this and reminds his readers that they must now change the form of habendum in their conveyances and instead of "To hold of me and my heirs" must say "To hold of the chief lord of the fee." Now this manuscript includes a part containing instructions for making a will, and here, after pointing out that the testator must first of all consider what debts he owes and what are owed to him, the writer says that the next thing to be considered is whether he has a wife or not and continues "If he has not, he should make his Will in respect of all his goods moveable and immoveable unless the custom of his country is against this. If he have a wife and children then a third part of all his goods is to be set aside equally and proportionately for the benefit of his wife, his debts having been first discharged, and another third part set aside for the maintenance of his children. Then of the other third part the Testator makes his Will. If he have a wife and no children then all his goods are to be divided into two parts of which one part shall be left for his wife which without her will and consent he shall not be able in any wise to will away but of one equal part he should make his Will." Clearly this conveyancer of 1300, whoever he may have been, had no doubt at all about the law governing the right to dispose of personal estate by will. He has in mind that there may be some custom still more restrictive, but, apart from any custom, the law of the realm limits the free right of disposal by giving to the wife and children their proper shares, the division being tripartite or bipartite according as the testator has both wife and children or has only a wife or only children.

It would seem then that the development of our law upon this point was roughly this—first, there was a time when the right of the wife and children to their reasonable parts was the Common Law of the land; then there came to be certain cities and places where, as indicated by Bracton, there was a custom allowing testators free right of disposal of the whole of their personal estates; then gradually the free right of testamentary disposition came to be the general law and the right of the widow and children to prevail only where a custom to that effect could be shown. For a time such right still obtained by custom over a large part of England including the Province of York, parts of the Principality of Wales, and the City of London. Finally, by the several statutes above mentioned, the custom in these places was abolished and at any rate for the last hundred years and more there has been no recognition by our law of any claim on the part of the widow or children and every testator has been free to dispose of the whole of his personal estate according to his liking.

And now in the year 1938, we have, in the Inheritance (Family Provision) Act, an alteration of the law which indicates that the tide of public opinion is setting in the opposite direction. It is felt that it is not right that a man should be allowed to leave all his property away from his family without making any provision for his wife and children. To remedy this there is to be a right to make application to the court on behalf of a surviving wife or other dependant

as defined by the Act, and the court, if of opinion that the will does not make a reasonable provision for such dependant may order that such reasonable provision as the court thinks fit shall be made out of the testator's net estate for the maintenance of such dependant. Such an application on the face of it bears some resemblance to the old writ "*De rationali parte bonorum.*" But if there is some resemblance and the alteration of the law made by the new Act is in some sense a return towards what the law used to be in former days, the return goes but a little way in that direction and the differences of the new law from the old are very considerable. To note some of the obvious differences will be at the same time to indicate the nature of the procedure under the new Act.

1. In the first place, while the old writ applied only to personal estate, for the purposes of the new Act the estate to be taken into account includes realty as well as personalty.

2. Secondly, under the Act the right to have provision secured is not as under the old writ to the family as such. The claim recognised is not that of family ties alone but of dependency. It is not the right of members of the family claiming to inherit a share in the fortune of their deceased father or husband, but the claim of a dependant wife or child to have some provision made for her or his maintenance.

3. Consequently, in the third place, the provision allowed to be granted by the court is by payment of income only. There is no right, as under the old writ, to a part of the capital except only in cases where the net estate does not exceed £2,000. Moreover, the provision is limited to the period of dependency and ceases on marriage in the case of either the widow or an unmarried daughter, except a daughter suffering from some mental or physical disability. With this exception there is no right at all to a daughter married at the time of the testator's death. Similarly in the case of a son the provision is limited to the period until he attains the age of twenty-one years or, if suffering from some disability, the cesser of such disability.

4. Fourthly, whereas under the old writ the right was to the widow and children, now it is to be to the surviving spouse and children, to the husband in respect of his wife's estate equally with the wife in respect of her husband's estate, a difference symptomatic of the extraordinary change in the social, economic and legal status of women in our modern world.

5. Fifthly, while the old tripartite division seems to be recalled in the limitation prescribed in the amount of income which may be awarded, not more than two-thirds where there is a wife (or husband) and also children and not more than half where there is only a wife (or husband) or only children, there is under the new legislation no definite part or share even of income to which either wife (or husband) or child is entitled—the provision to be made is entirely at the discretion of the court subject to the maximum limits mentioned.

6. Sixthly, there is to be no right of the children to an independent share as against the wife, inasmuch as it is provided that no application shall be entertained on behalf of any person where the testator has bequeathed not less than two-thirds of the income to a surviving spouse and there is no other dependant as defined by the Act except a child or children of such surviving spouse, a provision which does not seem wholly satisfactory as the testator may leave two-thirds of the income to his wife for her life and the capital subject to such life interest right away from his children with the result that, on the death of the wife, any dependant children may be left entirely unprovided for.

7. Finally, the benefit of the Act may be invoked not only on behalf of natural and lawful children of the testator, but also of children adopted under the Adoption of Children Act, 1926, as well as on behalf of a child *en ventre sa mere*. The right of an unborn child was no doubt recognised by the law from very early days, but the recognition of adoption is of course a late importation into our law.

Such being some of the differences in the proposed new right as compared with the right under the old writ "*De rationali parte bonorum.*" there are one or two other points to be considered in the provisions of the new Act.

It has been already noted that the benefit of the Act is to be confined to members of the family of the testator who were dependant on him at the time of his death. Any applicant must come within one of the following four categories: (*a*) a wife or husband; (*b*) a daughter who has not been married or who is, by reason of some mental or physical disability, incapable of maintaining herself; (*c*) an infant son; or (*d*) a son who is by reason of some mental or physical disability incapable of maintaining himself.

The question of the quantum of income to be allowed to a dependant is to be at the discretion of the court, but for its guidance there are expressly prescribed certain matters which must be taken into account. These are (1) the income of the applicant whether past, present or future; (2) the conduct of the applicant in relation to the testator or otherwise; (3) the reasons of the testator so far as ascertainable for making the dispositions made by his will, and (4) any other matter or thing which the court may consider relevant, whether in relation to the applicant or the beneficiaries under the will or otherwise.

Moreover, in considering the testator's reasons for making the dispositions made by the will, it is provided that the court may accept such evidence as it considers sufficient, including any statement in writing signed by the testator and dated, but so that the court in estimating the weight to be attached to any such statement shall have regard to all the circumstances from which any inference can reasonably be drawn as to the accuracy or otherwise of the statement.

Then with regard to the procedure, any application to the court must be made within six months from the date on which representation to the estate is first taken out. And, no doubt to meet the possible contingency of no person interested under the will applying for a grant, a dependant by or on whose behalf an application is intended to be made is enabled to take a grant of administration with the will annexed, it being provided that such a dependant shall be deemed to be a person interested in the testator's estate for the purposes of s. 162 (1) of the Supreme Court of Judicature Act, 1925.

If an application under the Inheritance (Family Provision) Act is successful and an Order is made, then the will is to take effect, and that as from the death, just as if the variations ordered by the court had been incorporated in the will when executed by the testator, and the effect for all purposes, including payment of duties, is to be the same as if the will had been so executed. After any Order under the Act has been made, an office copy of the Order is to be filed at the Principal Probate Registry, and a memorandum of the Order must be endorsed on or permanently annexed to the Probate or Letters of Administration with the Will annexed as the case may be.

After the expiration of six months from the grant of representation, the only orders that can be made are either (1) an order varying a previous order on the ground either of non-disclosure of any material fact or of change of circumstances; or (2) an order making provision for another dependant of the testator, but in no case can any such order affect any property other than property the income of which is at that time applicable for the maintenance of a dependant of the testator. Consequently after the lapse of the six months no person outside the family who is a beneficiary under the will can have his title or right to any property so inherited disturbed by any order subsequently made under the Act.

Such then are the provisions of the Inheritance (Family Provision) Act, 1938, not indeed making any sweeping changes in the right of testamentary disposition generally, but rather aimed at remedying some exceptional cases of hardship. Admittedly the Act does not go so far as some would wish; admittedly it does not provide safeguards against evasion which would not be difficult. The alteration made by the Act is not merely an entirely new move imposing a restriction on testamentary disposition where there has been no sort of restriction for the last hundred years and more, but it is actually a reversal of direction and, so far as it goes, a return to an almost forgotten state of the law when the claims of family upon the estate of a deceased husband or father were recognised and allowed by our courts. Such legislation is born of a changing social consciousness and reflects a gathering tendency in public opinion. As such it is rightly regarded as experimental. And if our legislators have preferred to proceed slowly and to take but a short initial step feeling, as it were, their way cautiously, who shall say that they have not been wise in so doing?

Mr. G. W. K. BUTCHER (Bingley) asked whether it would be necessary under this Act for executors to wait six months before distributing the estate in accordance with the will.

Mr. BOSANQUET replied that there was no provision for that, so far as he knew, but that it would certainly be wise not to distribute until the end of six months in case any application were made.

Mr. P. E. DIMES (London) expressed his great appreciation of the paper. He said that, as an ageing solicitor speaking from bitter experience, he found that if one wanted one's meed of happiness it was essential to be for ever guarding against the habit of looking below the surface. But if ever there was a case where an exception could be made, this was it. Solicitors could look and see that no harm was done by this

Act. When it had been mooted they had exclaimed: "God bless my soul! What are we coming to? The opulent man is already deprived of half his income by taxation, and when he has no more use for it, when he dies and wishes to benefit others, he is deprived of half his capital by death duties. Now it is proposed that he shall be deprived of one-half to two-thirds of the small remainder!" But nothing of the sort had in fact happened, nor had it ever been the intention of those responsible for the Bill. All that the Act had done was to make provision, subject to the greatest possible safeguards, to enable the court to say that that which was unethical should not take effect. It had done nothing more than take a forward step in the right direction.

Sir REGINALD POOLE (London) was not sure that he fully agreed with Mr. Dimes. In fifty years he had only once come across a really unjust will. He thought the Act was a dangerous Act, and he disliked and deplored any fettering of the testator's free will. There were already precautions to prevent a man from disposing unjustly. The first defence was the advice of the solicitor, who did his best to see that justice was done. Those who, like himself, had beguiled the period of a lengthy sermon by studying the Book of Common Prayer, would remember that a part of it dealt with the duties of a parson visiting the sick. One of his duties was to see that the man had made a just distribution of his property, and to put him in the hands of a lawyer.

Mr. T. A. NEEDHAM (Manchester) expressed interest in the historical part of the paper and described some wills which he had discovered in the course of his researches into the sixteenth century. The first was dated March, 1557, in the Province of Canterbury and the County of Staffordshire. The testator directed that his goods should be divided into three parts: one he left to himself, the second to his wife, and the third to his children. The second was in the Diocese of Lincoln in the Province of Canterbury, and dated September, 1558, in the County of Leicester. Here again the goods were to be divided into three parts: one to pay his debts, one for his wife, and one for his children. A Derbyshire testator in 1569 had given similar directions, while another sixteenth-century testator in Staffordshire left one part to his wife and the other to his five children. In 1597 a testator in Nottinghamshire, in the Diocese and Province of York, left one-half of his farm to his wife, together with one-third of his goods and chattels, and the rest to his children. In none of these wills was there any evidence of any binding custom, though they did give evidence of a trace of a custom of leaving a third to the wife, a third to the children, and a third free, or, if there were no children, one-half to the wife. He had, he added, spent forty years doing work connected with wills within three minutes of Manchester Town Hall, and he supposed that the number of wills with which he had dealt must run into four figures. Yet only once had he come across an unfair or inequitable will, and in that case the sufferer had abided by the will, although he might have avoided it. It had been made by a married woman, disposing of money which she had scraped out of her husband's wages. She left a life interest to her husband, with remainder to an adopted daughter for life, with remainder to a Manchester hospital for the purpose of endowing a bed in her name. He regarded the Act as a means of promoting strife and litigation, of encouraging unworthy children to try speculative actions in the hope that they would get something either out of the court or out of the other side. He saw nothing but trouble and anxiety in connection with it.

Mr. H. F. SIMPSON (Manchester) quoted the will of a cotton merchant who had been of a very gentle disposition and more womanly than his wife. He had requested his executors to express to his sisters his regret that during his lifetime he had been unable to ask them into any of his dwelling-houses without fear of their being insulted.

Mr. G. E. HUGHES (Bath) thought it was a pity the opportunity had not been taken to deal with circumstances which he had once or twice come across: when a man had made a perfectly just will in youth and then become insane. Before his death his circumstances had materially altered, so that the will he had left was grossly unjust.

Mr. J. T. HIGGS (Brierley Hill) asked whether the public assistance authorities could initiate proceedings under the Act.

Mr. BOSANQUET replied that he knew of nothing in the Act which allowed this.

Miss CARRIE MORRISON (London) pointed out that the women's societies had been very strongly in favour of the Act, and submitted that they must have had a great many instances of injustice to families, especially children. She herself thought that the Act did not go far enough.

Mr. F. A. PADMORE (Manchester) supposed that the promoters of the Act had found their examples of injustice mainly among poor people. It was not the solicitor-drawn will but the home-made article on a sixpenny form that offered the best examples. A man might have left his wife and be living with another woman, or have legitimate and illegitimate children, or be under the influence of some person who had no business to have power. It was difficult to say that the Act was one which ought to be deprecated. Solicitors could not cite many instances of unjust wills, because a solicitor always did everything he could to prevent a moral or family injustice.

Mrs. MURIEL LEFROY (Bournemouth) was glad that the definite one-third clause had not been included in the Act, but that the fraction had been left to the court. She came across a great many cases where more injustice might be created by giving the wife a right to a one-third share, although this right had long been in force in Scotland.

Mr. BOSANQUET, in reply, expressed surprise at the dissatisfaction with the Act revealed by the discussion. He had thought that the objection would be that it was an absurd, pettifogging Act which did not do what it set out to do and only touched the fringe of the problem. In Australia and New Zealand legislation of this kind was already in force. There had been an appeal to the Privy Council this year in which the court had amended a will and increased legacies from something like £15,000 to £25,000. There were still evils to be remedied, but the promoters of the Bill had been right, he thought, in going a very little way at first. The legislation it enacted must be considered as purely experimental.

THE PRESIDENT welcomed the historical research with which the paper had begun, and observed that in Scots law provision for wife and children had long been in force.

(To be continued.)

The Banquet.

Mr. F. A. PADMORE, President of the Manchester Law Society, took the chair at the Banquet, which was held at the Midland Hotel on Tuesday evening.

In order that members might not miss the important speech broadcast by the Prime Minister, arrangements were made for it to be relayed to the guests during the dinner.

After dinner, the gathering honoured the toast of "His Majesty the King, Duke of Lancaster," and that of "Her Majesty the Queen, Queen Mary, Princess Elizabeth and other Members of the Royal Family."

The Lord Mayor, ALDERMAN SIR WILLIAM KAY, in proposing the health of The Law Society, said that in the last two days he had come to appreciate lawyers in a way in which he had not appreciated them before. There were two sides to a lawyer's office, and the best was the outside. He was sure that The Law Society had enjoyed a good time, and that members had met together and each had seen quite another side of his particular antipathy. The Society and the law of England stood for much in the everyday life of the people. Many years ago he had entertained Judge Farquhar, from America, at a banquet of the Chamber of Commerce. The judge had told his hosts that he was proud of being an Englishman—his forbears were English—and that he was particularly proud of English law, because it was so fair. All the laws in the United States were based on it, and he was proud that they should be. The Lord Mayor, in giving the toast, hoped that The Law Society might flourish for ever.

Mr. W. W. GIBSON, President of The Law Society, in reply, declared his intention of telling those present who did not know the Society something about it and about what it—and its Council—were not. Widespread misapprehension existed, and the popular idea about the Council was, apparently, that they consisted of a gang of old men who were doddering down to the grave (loud laughter). This was not true (applause). There was an equally strong delusion in certain quarters—probably the same quarter—that such brains as the Council might ever have had (though it was doubtful whether any of them ever had any brains) were now devoted solely to the study of food and wine. There was more truth at the moment in that rumour than in the other (applause). All his colleagues on the Council had greatly appreciated the hospitality which they had so far received, and not least that of the dinner—as far as it had gone. He said this with true lawyer's caution, for he was still looking forward in hope, in which he believed he was not alone.

The Council had a great many duties to perform on behalf of the Society. Some people asked, "What does the Council do?" and said they never did anything. In fact, they held an enormous number of meetings every year, and had so many sub-committees, which held so many meetings, that a proposal was on foot to reduce the number by about a quarter. The Council maintained close relations with many Government Departments and did useful work in connection with them. They were in especially close touch with the Lord Chancellor's Department, the Master of the Rolls and the

Poor Persons Department, which regulated the Poor Persons Procedure which had always been so dear to the heart of Sir Edmund Cook, who would break his heart if anything happened to put a spoke in its wheel. At present it was flourishing, though its work had been made more difficult by recent legislation and the heavy burden that this imposed. The new demand had been met so far and the difficulties were gradually being overcome.

The Council did their level best to look after the interests of their members and to uphold the highest standards of honour and dignity. They did this not solely in the interests of the profession, but also with the object of benefiting the public. Most responsible solicitors would maintain that what benefited the public ultimately benefited the lawyer. The right view for any professional man was to place the public interest well in advance of his own or even that of his profession.

Much of the work of the Council was from its nature unseen and must remain unseen. Little could be said about it in public. He assured the gathering, however, that the work was valuable. At times a member might feel that the Council were not getting on as fast as they should with the work he would most like to see done. If, however, members would exercise a little patience they would realise that, infirm, senile and doddering as members of the Council might be, they did their best and did very useful work. They would endeavour to do so as long as members left them in that position—for they were only in the Council on sufferance, and ultimately they had to do what members wished them to do. On the whole they did it to the best of their ability.

Legal and Medical Education.

The toast "The Bench and the Bar" was to have been proposed by Mr. E. L. Burgin, M.P., Minister of Transport, and responded to by Sir F. Boyd Merriman and Sir Claud Schuster, K.C. Owing, however, to the summoning of Parliament for Wednesday, none of these speakers could attend the banquet, and the toast was proposed by Professor J. S. B. Stopford, Vice-Chancellor of the University and a member of the medical profession. He complained that he had been briefed at very short notice and that his leader had not left him any notes. Moreover, he did not clearly understand the meaning of the toast. He knew nothing about benches and dared not admit to a knowledge of bars. From his youth up he had had great respect for the legal profession, and when addressed by a policeman through the window of his car, he invariably, and with consistent success, called him "Sir." He had found members of the legal profession somewhat sensitive, and had known the hosts at a legal dinner take offence at the story of the accused person who, when asked by the chairman of the bench whether he was legally represented, had answered, "No, I intend to tell the truth." On the other side, lawyers were not so tender in their attitude to his own profession, and he recalled a most disgraceful story told by a very distinguished judge about one of his friends, a surgeon, whom his lordship had actually mentioned by name. A soul had presented himself at the gates of Heaven and had been refused admission; nor had he been admitted to Hell. On his return to Heaven, St. Peter had made further inquiry, as a result of which the soul was admitted and the misunderstanding cleared up; he had been a patient of the surgeon and had arrived ten years before his time.

During the last four years Professor Stopford had come closely into touch with the work of the Faculty of Law at the University, and had realised more than ever before what The Law Society did for legal education. He warmly thanked those members of the legal profession who served on the Advisory Committee of Legal Education. Mr. Padmore had, he said, been in that capacity a tower of strength upon which he leaned almost weekly. He had also been impressed with the parallel between law and medicine. The governing bodies of both professions undertook considerable responsibility for the education of entrants. Furthermore, they exercised disciplinary powers in cases of professional misconduct, and did everything in their power to maintain the highest possible ethical standards. The measure of control exercised in the two professions was not the same, but both bodies gained much from the co-operation of practitioners and of whole-time teachers. Both professions were keen to improve educational standards on admission to the professional courses proper. In planning reforms and developments it was important that the controlling bodies should remember that they claimed to represent learned professions and that their aim was not merely the production of technical experts and practitioners. The danger of doing so was evident in his own profession, and might not be present in the legal profession. Owing to the overcrowding of subjects in the medical curriculum and the appearance of new subjects at such a terrific rate, there was a clamour in certain quarters for the exclusion of subjects which were not of immediate practical importance. He had always opposed this demand, and the day would be unfortunate when overcrowding was met by leaving out subjects which had an educational and a cultural value but not a very obvious and immediate practical one (Hear, hear!). The case would best be met by the happy co-operation of practitioners and whole-time teachers in the law and medical schools to reach a happy compromise between the academic point of view and that of the practitioner and the technician.

Sir John Bennett, K.C., Vice-Chancellor of the County of Lancaster, said, in reply, that he had hoped to be able to thank Professor Stopford for the kind things he had said about the Bench and the Bar, but now he was not so sure that his friend had been altogether complimentary. Professor Stopford had a much more intimate connection with the law than he could gain from the driving of a motor car, and he knew that a university education in the history and principles of law were most important to anyone who aspired to be a lawyer rather than a mere practitioner. The School of Law at Manchester University deserved the support of all Manchester solicitors, and the most practical way in which they could give that support was by encouraging their clerks who were learning law to join the school, and by giving them the time and opportunity to attend its classes. He congratulated the Manchester Law Society on its centenary, and thus on having carried out its work for at least three generations. It had established for itself a priceless possession—that of great traditions. Those guests who were judges administering the law would be the first to acknowledge the benefit which they received from the traditions of their predecessors, which were the foundation of the respect and confidence which they enjoyed.

Judge T. B. Leigh, also in reply, thanked Professor Stopford—"hereinafter referred to as Vice-Chancellor No. 1"—and felt that he should merely say, "Vice-Chancellor No. 1, I thank you; and Vice-Chancellor No. 2, I concur." Out of respect, however, for the toast, the centenary celebration, and above all for "Doctor" Padmore (applause), he felt he should say a few words more by way of reasoned judgment. He regretted that a practising barrister should not have been chosen to respond to the toast. It had been lately held, as a result of intimate research, that a barrister who assumed the judicial office did not thereby cease to be a member of the Bar. His barristership was rendered for the moment negative, but it was not destroyed. It was a hopeful prospect that a judge who might some day be superannuated could seek to return to the lists without the somewhat dangerous experiment of another course of Inns of Court dinners and the tragic experience of sitting again for a Bar examination. On the other hand, a practising barrister could have told from recent experience what Judge Leigh could only tell from hazy recollection; of the perils of eating a dinner with unrestricted wine and of then being called to the Bar and asked to shake hands with the Treasurer of the Inn for the time being; of the year's reading in chambers, with an occasional essay in a court of record; of the first brief, marked "£1 3s. 6d.," with its own special balance-sheet: "Received"—and it was received, because it was sessions!—the fee, and on the other side: "Clerk, 2s. 6d.; sessions entrance fee and term fee, £1 10s.; railway fare, 7s. 6d.; lunch, 5s.; champagne all round for first brief, £3 5s.; balance transferred to general account." And then the hopes and fears, the sunshine and shadow, the difficult cases won and the difficult clients lost; and, above all, that incomparable camaraderie of the Bar, where those who contended against one another strenuously in the day dined together as brothers at night, when all their differences were forgotten and they prepared for the contests of the morrow. These things had become memories fading gradually into the past, but they were also an inspiration for the present and future.

The Bar and the Bench, like the solicitors' profession, stood for the elucidation of the truth. Truth, it was said, lay hid at the bottom of a well. He had observed in the structure of his court a portion called the "well"; it was not the portion occupied by the judge, still less by the jury, and learned counsel were not allowed to penetrate its recesses: the well of the court was occupied by the solicitors. Sometimes, when counsel was struggling to explain to the court a case of which he himself had only heard half an hour before, a solicitor would frantically try to guide him from the well and be beaten off contemptuously; then the attempt of truth to rise to the Bench was hindered. The county court bench had the advantage that they were sometimes actually allowed the assistance of those who sat in the well, and sometimes by this cutting out of the middle-man the elucidation of truth was assisted.

THE LAWYER IN SOCIAL LIFE.

THE BISHOP OF MANCHESTER, Dr. Guy Warman, proposed the health of The Manchester Law Society. He made several complaints against the legal profession, of which the chief concerned his judge and legal secretary, of whom he was proud and fond, and who performed their duties admirably, but who would not always let him do what he liked—why? this was a free country—and generally made him do it much more slowly than he would have liked. Some people imagined that the legal profession was only interested in persuading people to go to law. The greatest contribution its members made to society was to prevent people from going to law. They tried in this imperfect world to help in that task in which "Vice-Chancellor No. 1" and himself were trying to help: making the world a better place for people to live in. In the proclaiming of high ideals and the determination to prevent the lower ideals from possessing society, the mere parson and the learned man of law were brothers. The lawyers of Manchester contributed to the common good in many ways outside their professional life. The chairmen of two great hospitals and the vice-chairman of the most important committee in the diocese were both present, and the other day Mr. Padmore had launched a great effort on behalf of the largest girls' school in the city.

The CHAIRMAN, in reply, said that the Manchester Society had had one hundred years of life, full to the brim and flowing over, for the benefit of others first and themselves last. Other societies had been doing equally valuable work and for even longer: Bristol since 1770, Yorkshire since 1786, and even Liverpool (laughter) since 1827. It was not, however, fair to say that Manchester had had only a centenary. It had possessed before 1838 a law society which had met at an hotel. Perhaps that body had not troubled much about abstruse questions of law, but rather about such matters as occupied the gathering that night: a very jolly and happy time among old friends and new friends. A local society could work for itself alone, or with the Association of Provincial Law Societies and the Council. He greatly valued the association of a society such as his with those two greater bodies. Some of those present had that morning attacked the Council, but no one could understand how the system worked until he had had experience of all those bodies and of their co-operation. The Council never passed a resolution on a major question until it had heard the views of the Provincial Association. It did tremendous work, and the local societies should work with it. He paid warm tribute to Mr. A. H. Goulty for his organisation of the Conference. He himself was next day to be robed in red by the University: this was the tribute of the University to the work the Manchester Law Society had done for them. His one hope was that the inscription on its seal—"*Fiat justitia*"—would be fulfilled.

Legal Notes and News.

Honours and Appointments.

It is announced by the Colonial Office that Sir Richard Clifford Tute, Chief Justice of the Bahamas, will shortly retire from the Colonial Legal Service. His Majesty the King has been pleased to approve the appointment of Mr. OSCAR BEDFORD DALY, M.B.E., to be Chief Justice of the Bahamas in succession to Sir Richard Tute.

Notes.

There are twenty-four appeals for hearing in the Michaelmas List of the Judicial Committee of the Privy Council. Four are from Canada, thirteen from India, and one each from Newfoundland, West Africa, Palestine, Ceylon, Gibraltar, Hong-kong, and Mauritius. Eight judgments await delivery.

Lord Justice Greer is retiring from the Supreme Court Bench, with effect from early next term. He is seventy-five years old. He was called to the Bar by Gray's Inn in 1886, took silk in 1910, and nine years later he was appointed a Judge of the King's Bench Division. In 1927 he became a Lord Justice of Appeal.

COUNTY COURT CALENDAR FOR OCTOBER.

The following are the dates of sittings in October on Circuit 41, which were received too late for inclusion in the Calendar in last week's issue:—

Circuit 41—Middlesex.

His Hon. Judge Earengey, K.C.

His Hon. Judge Hancock (Add.)

Clerkenwell, 3, 4 (J.S.), 5, 6, 7, 10, 11 (J.S.), 12, 13, 14, 17, 18 (J.S.), 19, 20, 21, 24, 25 (J.S.), 26, 27, 28, 31.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th June, 1932) 2%. Next London Stock Exchange Settlement, Thursday, 13th October 1938.

	Div. Months.	Middle Price 28 Sept. 1938.	Flat Interest Yield.	‡ Approximate Yield with redemption
ENGLISH GOVERNMENT SECURITIES			£ s. d.	£ s. d.
Consols 4% 1957 or after	FA	102	3 18 5	3 16 11
Consols 2½%	JAJO	67	3 14 8	—
War Loan 3½% 1952 or after ...	JD	94	3 14 6	—
Funding 4% Loan 1960-90	MN	103xd	3 17 8	3 16 0
Funding 3% Loan 1959-69	AO	92	3 5 3	3 8 5
Funding 2¾% Loan 1952-57	JD	91	3 0 5	3 8 1
Funding 2½% Loan 1956-61	AO	84	2 19 6	3 10 6
Victory 4% Loan Av. life 21 years ...	MS	103	3 17 8	3 15 10
Conversion 5% Loan 1944-64 ...	MN	106xd	4 14 4	3 13 4
Conversion 3½% Loan 1961 or after	AO	93	3 15 3	—
Conversion 3% Loan 1948-53 ...	MS	94	3 3 10	3 10 11
Conversion 2½% Loan 1944-49 ...	AO	92	2 14 4	3 9 2
National Defence Loan 3% 1954 58	JJ	94	3 3 10	3 8 6
Local Loans 3% Stock 1912 or after	JAJO	80	3 15 0	—
Bank Stock	AO	320xd	3 15 0	—
Guaranteed 2¾% Stock (Irish Land Act) 1933 or after	JJ	74	3 14 4	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	83	3 12 3	—
India 4½% 1950-55	MN	108	4 3 4	3 13 3
India 3½% 1931 or after	JAJO	85	4 2 4	—
India 3% 1948 or after	JAJO	73	4 2 2	—
Sudan 4½% 1939-73 Av. life 27 years	FA	100½	4 9 7	4 9 5
Sudan 4% 1974 Red. in part after 1950	MN	100½	3 19 7	3 18 11
Tanganyika 4% Guaranteed 1951-71	FA	100½	3 19 7	3 18 11
L.P.T.B. 4½% "T.F.A." Stock 1942-72	JJ	109½	4 9 7	4 6 2
Lon. Elec. T. F. Corpn. 2½% 1950-55	FA	87½	2 17 2	3 9 9
COLONIAL SECURITIES				
Australia (Commonw'th) 4% 1955-70	JJ	97½	4 2 1	4 2 9
Australia (Commonw'th) 3% 1955-58	AO	85½	3 10 2	4 1 6
Canada 4% 1953-58	MS	102½	3 18 1	3 15 8
Natal 3% 1929-49	JJ	95½	3 2 10	3 11 4
New South Wales 3½% 1930-50 ...	JJ	91½	3 16 6	4 8 7
New Zealand 3% 1945	AO	90½	3 6 4	4 14 10
Nigeria 4% 1963	AO	102½	3 18 1	3 16 11
Queensland 3½% 1950-70	JJ	87½	4 0 0	4 4 8
*South Africa 3½% 1953-73	JD	97½	3 11 10	3 12 6
Victoria 3½% 1929-49	AO	91	3 16 11	4 11 2
CORPORATION STOCKS				
Birmingham 3% 1947 or after ...	JJ	77½	3 17 5	—
Croydon 3% 1940-60	AO	90½	3 6 4	3 12 8
Essex County 3½% 1952-72 ...	JD	96½	3 12 6	3 13 8
Leeds 3% 1927 or after	JJ	77½	3 17 5	—
Liverpool 3½% Redeemable by agreement with holders or by purchase...	JAJO	90½	3 17 4	—
London County 2½% Consolidated Stock after 1920 at option of Corp.	MJSD	64½	3 17 6	—
London County 3% Consolidated Stock after 1920 at option of Corp.	MJSD	77½	3 17 5	—
Manchester 3% 1941 or after ...	FA	77½	3 17 5	—
Metropolitan Consd. 2½% 1920-49 ...	MJSD	91½	2 14 8	3 8 10
Metropolitan Water Board 3% "A" 1963-2003	AO	79½	3 15 6	3 17 4
Do. do. 3% "B" 1934-2003 ...	MS	80½	3 14 6	3 16 2
Do. do. 3% "E" 1953-73 ...	JJ	90½	3 6 4	3 9 6
*Middlesex County Council 4% 1952-72	MN	98½	4 1 3	4 1 7
* Do. do. 4½% 1950-70	MN	100½	4 9 7	4 8 10
Nottingham 3% Irredeemable ...	MN	77½	3 17 5	—
Sheffield Corp. 3½% 1968	JJ	96½	3 12 6	3 13 10
ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS				
Gt. Western Rly. 4% Debenture ...	JJ	99½	4 0 5	—
Gt. Western Rly. 4½% Debenture ...	JJ	108½	4 2 11	—
Gt. Western Rly. 5% Debenture ...	JJ	120½	4 3 0	—
Gt. Western Rly. 5% Rent Charge ...	FA	115	4 6 11	—
Gt. Western Rly. 5% Cons. Guaranteed	MA	105½	4 14 9	—
Gt. Western Rly. 5% Preference ...	MA	85½	5 17 0	—
Southern Rly. 4% Debenture ...	JJ	97½	4 2 1	—
Southern Rly. 4% Red. Deb. 1962-67	JJ	102½	3 18 1	3 16 9
Southern Rly. 5% Guaranteed ...	MA	107	4 13 5	—
Southern Rly. 5% Preference ...	MA	85½	5 17 0	—

* Not available to Trustees over par.

‡ In the case of Stocks at a premium, the yield with redemption has been calculated at the earliest date; in the case of other Stocks, as at the latest date.